

VOLUME 8

PAGES 1511 - 1657

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DIGITAL REG OF TEXAS, LLC)
)
)
PLAINTIFF,) NO. C-12-1971 CW
)
)
VS.) THURSDAY, SEPTEMBER 4, 2014
)
)
ADOBE SYSTEMS, INC., ET AL.,) OAKLAND, CALIFORNIA
)
)
DEFENDANTS.) JURY TRIAL
)
_____)

BEFORE THE HONORABLE CLAUDIA WILKEN, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR PLAINTIFF: DINOVO, PRICE, ELLWANGER & HARDY LLP
 7000 NORTH MOPAC EXPRESSWAY, SUITE 350
 AUSTIN, TEXAS 78731
BY: ANDREW G. DINOVO, ESQUIRE
 ADAM G. PRICE, ESQUIRE
 GREGORY DONAHUE, ESQUIRE
 JAY D. ELLWANGER, ESQUIRE
 NICOLE E. GLAUSER, ESQUIRE

BARTKO ZANKEL BUNZEL MILLER
ONE EMBARCADERO CENTER, SUITE 800
SAN FRANCISCO, CALIFORNIA 942111
BY: W. PAUL SCHUCK, ESQUIRE

ALSO PRESENT: MICHAEL FARLEY, COMPANY REPRESENTATIVE
(APPEARANCES CONTINUED)

REPORTED BY: DIANE E. SKILLMAN, CSR 4909, RPR, FCRR
 OFFICIAL COURT REPORTER
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

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2
3
4 **FOR DEFENDANT**
5 **ADOBE SYSTEMS:**

WEILL, GOTSHAL & MANGES, LLP
201 REDWOOD SHORES PARKWAY
REDWOOD SHORES, CALIFORNIA 94065
BY: EDWARD R. REINES, ESQUIRE
SONAL N. MEHTA, ESQUIRE
BYRON BEEBE, ESQUIRE
ANANT PRADHAN, ESQUIRE

6
7
8
9 **ALSO PRESENT:**

PAUL BETLEM, COMPANY REPRESENTATIVE
KAREN ROBINSON, IN-HOUSE COUNSEL

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1 THURSDAY, SEPTEMBER 4, 2014

8:24 A.M.

2 P R O C E E D I N G S

3 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

4 **THE CLERK:** REMAIN SEATED. COME TO ORDER. COURT IS
5 IN SESSION.6 **THE COURT:** GOOD MORNING. I WILL TELL YOU WHAT I'VE
7 DONE WITH THE INSTRUCTIONS. YOU HAVE A COPY THERE. THAT'S
8 ACTUALLY NOT TOTALLY FINAL. THERE'S A MISTAKE IN THERE, BUT I
9 WILL GO THROUGH AND TELL YOU WHAT I DID, WHERE THERE WERE
10 CHANGES MADE.11 THE FIRST ONE IS ON PAGE 4. I ADDED A SENTENCE AT LINE 18
12 TO 20 OR 19 TO 21, I GUESS, THE FALSO IN UNO SENTENCE.13 PAGE 5, I ADDED THE SENTENCES ABOUT THE COURT REPORTER
14 TAKES CUSTODY OF THE DOCUMENTS IN THE DEPOSITION SECTION AND
15 ALSO A SENTENCE ABOUT THE WITNESS CAN MAKE CORRECTIONS.16 THEN ON PAGE 7, I FOUND A REFERENCE AT LINE 7 TO
17 "CONTRIBUTED TO", SO I TOOK THAT OUT.18 AND ON PAGE 9, I JUST REORGANIZED IT A LITTLE BIT TO MAKE
19 IT FLOW BETTER. AT THE END OF THE GENERAL INFRINGEMENT
20 SECTION, IT STOPS WITH -- WELL, IT GOES TO "CAPABLE OF
21 INFRINGEMENT USE" AND THEN I'M GOING TO ADD A SENTENCE THERE OR
22 REMOVE A SENTENCE UP TO THERE WHICH SAYS, "IN THIS CASE,
23 DIGITAL REG ARGUES THAT ADOBE INFRINGED ITS PATENTS BOTH
24 DIRECTLY AND INDIRECTLY". THAT'S THE INTRO TO THE NEXT PART
25 WHICH THEN GOES TO DIRECT INFRINGEMENT. "TO DECIDE", ET

1 CETERA. THAT PARAGRAPH, THE SENTENCE THAT'S AT THE END OF
2 THAT PARAGRAPH IN YOUR VERSION THAT SENTENCE IS WHAT GETS
3 MOVED TO UP TO THE END OF THE LAST SECTION TO INTRO THE DIRECT
4 VERSUS INDIRECT. IT JUST FLOWS BETTER THAT WAY.

5 OKAY. THEN WE HAVE -- THE NEXT SECTION THEN IS INDIRECT
6 INFRINGEMENT AND IT'S GOING TO SAY "INDIRECT INFRINGEMENT:
7 INDUCING INFRINGEMENT" AS THE HEADING. AND THEN -- THEN WE
8 INTRO THAT WITH THE -- MOVING A SENTENCE THAT WAS SOMEWHERE
9 ELSE BEFORE. ADOBE ALSO -- "DIGITAL REG ALSO ALLEGES ADOBE
10 INDIRECTLY INFRINGED". DEFINE INDIRECT INFRINGEMENT.

11 I'M NOT -- THEN I'M GOING TO ADD THE SENTENCE THAT DIGITAL
12 REG WANTS ABOUT WILLFULLY BLIND.

13 AND THEN IN THE WILLFULNESS INSTRUCTION, WHERE WE HAVE NOW
14 ON PAGE 12, LINE 3 TALKING ABOUT THE 125, I SAY, "MR. VENTERS
15 TESTIFIED THAT HE SENT TO ADOBE VENTURES A DOCUMENT ENTITLED
16 'ADOBE VALUE PROPOSITION'. SUCH A DOCUMENT WAS ADMITTED AS
17 125C, DIFFERENT VERSIONS EXIST", ET CETERA.

18 I'M NOT GOING TO ADD THE SENTENCE THAT DIGITAL REG
19 PROPOSED ABOUT SECRECY, BUT WHAT I AM GOING TO DO -- I LOOKED
20 WHERE THE SECRECY THINGS COME FROM, AND I FOUND THEM. THEY'RE
21 IN THE FORM INSTRUCTION ABOUT THE DIFFERENT PRONGS OF
22 ANTICIPATION.

23 AND WHERE THEY COME FROM IS 102, AND CASE LAW GLOSSES ON
24 102, WHICH IT MAKE VARIOUS REFERENCES TO BEING ABLE TO FIND
25 DOCUMENTS IN THIS AND THAT. SO INSTEAD OF STICKING IN THERE

1 SEPARATELY WITHOUT AUTHORITY, I PUT BACK IN ALL OF THE
 2 ANTICIPATION POSSIBILITIES THAT MR. REINES RELUCTANTLY AGREED
 3 TO TAKE OUT. I PUT THEM BACK IN WITH THEIR RESPECTIVE SECRECY
 4 REQUIREMENTS.

5 SO TO SUM UP, THE SENTENCE THAT DIGITAL REG WANTED, I DID
 6 NOT ADD, BUT UNDER ANTICIPATION YOU'LL SEE THE 102 FACTORS
 7 WHICH DO HAVE THEIR OWN INTERNAL PUBLICITY REQUIREMENTS. SO I
 8 THINK THAT IS AN ACCURATE STATEMENT OF THE LAW.

9 UNDER OBVIOUSNESS, WE TALKED ABOUT THE CHANGE YESTERDAY
 10 THAT I MADE. AND THAT'S JUST HOW IT IS NOW. "THE ULTIMATE
 11 CONCLUSION OF WHETHER A CLAIM IS OBVIOUS SHOULD BE BASED UPON
 12 YOUR DETERMINATION OF SEVERAL FACTUAL DECISIONS", AND THEN WE
 13 GO 1 THROUGH 5. WE TALKED ABOUT THAT YESTERDAY.

14 AND THEN I'M JUST GOING TO LEAVE IN ALL OF THE
 15 OBVIOUS/NONOBVIOUS FACTORS. WE TALKED ABOUT CUTTING SOME OF
 16 THEM OUT; I AM JUST GOING TO LEAVE THEM ALL IN.

17 WE TALKED YESTERDAY ABOUT THE DAMAGES, BURDEN OF PROOF,
 18 FIRST PARAGRAPH. AND I USE THIS SENTENCE THAT WE AGREED ON
 19 YESTERDAY. "COMPENSATE IT FOR INFRINGEMENT BY THE USE OF
 20 ADOBE'S ACCUSED PRODUCTS."

21 THEN ON THE LUCENT QUESTION, I'M NOT GOING TO GIVE IT IN
 22 THE WAY THAT DIGITAL REG ASKED. HOWEVER, I DID WRITE A
 23 SENTENCE STARTING WITH THE PARAGRAPH, "ALTHOUGH" ON PAGE 18 AT
 24 LINE 6, WHICH COMES FROM LUCENT AND I THINK IS AN ACCURATE
 25 STATEMENT. "ALTHOUGH THERE IS NO RIGID REQUIREMENT THAT

1 DAMAGES IN ALL CIRCUMSTANCES BE LIMITED TO SPECIFIC INSTANCES
2 OF INFRINGEMENT PROVEN WITH DIRECT EVIDENCE, THE DAMAGES AWARD
3 MUST BE CORRELATED TO THE EXTENT THE INFRINGING METHOD IS USED
4 BY CONSUMERS BECAUSE THIS IS WHAT THE PARTIES TO THE
5 HYPOTHETICAL NEGOTIATION WOULD HAVE CONSIDERED."

6 AND THEN THAT'S FOLLOWED BY THE SENTENCE THAT ADOBE WROTE
7 WHICH WE HAD TALKED ABOUT YESTERDAY.

8 AND THEN I ADDED IN THE CLAIM DEFINITIONS, I HAD TO
9 REWRITE IT A LITTLE BIT, BUT "BASED ON" -- THIS IS PAGE 29,
10 LINE 12. "BASED ON WHETHER OR NOT NOTIFICATION INFORMATION
11 WAS SENT", THEN THE SENTENCE I ADDED FROM THE CLAIM
12 CONSTRUCTION ORDER READS, "THE PATENTED INVENTION GRANTS
13 ACCESS IMMEDIATELY UPON THE ATTEMPT TO TRANSMIT NOTIFICATION
14 WITHOUT WAITING FOR A RESPONSE FROM THE SERVER".

15 AND THEN I PUT BACK IN THE AGREED-UPON DEFINITION OF
16 "EXECUTING AN INSTALLATION PROCESS".

17 SO I THINK THIS IS ALL WORKABLE. I GAVE YOU A NEW VERDICT
18 FORM. THE ONLY CHANGE THERE WAS THE NUMBERING IS CORRECTED.

19 OH, I NEED A COPY OF THAT VERDICT FORM.

20 **THE CLERK:** I PUT A COPY UP THERE.

21 **THE COURT:** OKAY. I'M NOT REALLY ASKING FOR ANY MORE
22 COMMENTS, BUT IF YOU HAVE ANYTHING EARTHSHAKING, YOU CAN TELL
23 ME.

24 I DON'T KNOW WHAT HAPPENED TO THIS MONITOR. I CAN'T SEE
25 YOU ALL ANYMORE. IT DIDN'T USED TO BE THERE.

1 **THE CLERK:** IT'S A MONITOR THEY PUT UP.

2 **THE COURT:** OH, OKAY. I DON'T KNOW WHOSE MONITOR
3 THAT IS, BUT IT BLOCKS MY VIEW OF COUNSEL.

4 **MS. GLAUSER:** I DON'T HAVE ANYTHING.

5 **THE COURT:** ANYTHING YOU FEEL THE NEED TO ADD?

6 **MR. REINES:** NOTHING EARTHSHAKING, OBVIOUSLY
7 PRESERVING OUR PRIOR-STATED OBJECTIONS.

8 **THE COURT:** I DID GO BACK AND LOOK AT THE MOTIONS
9 THAT YOU WERE ALLUDING TO. YOU MADE THAT MOTION; I DENIED
10 THAT MOTION IN WRITING. IT PROPOSED STRIKING THE EXPERT'S
11 TESTIMONY ON THE POINT, AND I WILL NOT STRIKE IT. IT
12 OBVIOUSLY HAS PROBLEMS, AND THE PROBLEMS ARE ADDRESSED IN THE
13 INSTRUCTION, AND YOU CAN ARGUE THEM, BUT I'M NOT GOING TO
14 STRIKE THE EXPERT'S TESTIMONY.

15 **MR. REINES:** HOPEFULLY, DEPENDING ON THE OUTCOME, YOU
16 WILL LOOK FRESH AT THAT SITUATION AND THE RECORD.

17 **THE COURT:** TRUE.

18 **MS. GLAUSER:** WE DIDN'T HAVE ANYTHING ON THE JURY
19 INSTRUCTIONS EITHER, JUST RESERVING THE OBJECTIONS WE'VE
20 ALREADY MADE.

21 THERE WERE A FEW EVIDENCE ISSUES THAT I THINK ARE REALLY
22 JUST HOUSEKEEPING, THOUGH.

23 THE PARTIES FILED A STIPULATION REGARDING THE EVIDENCE
24 THAT WE CAME TO AGREEMENT ON COULD BE ADMITTED BASED ON THE
25 LIMITED PAGES. SO WE'VE PROVIDED THAT TO MS. RILEY, BUT I

1 DON'T KNOW THAT IT CAN BE ACTUALLY ADMITTED UNTIL YOU'VE RULED
 2 ON THAT STIPULATION.

3 **THE COURT:** OKAY. I CAN GAVEL IT. I CAN RULE ON IT
 4 ONLINE.

5 **MS. GLAUSER:** THERE'S A SIMILAR SOURCE CODE EXHIBIT.
 6 WE FILED A MOTION TO SUBMIT IT MANUALLY AND TO HAVE IT UNDER
 7 SEAL. ADOBE HAS REQUESTED THAT IT REMAIN UNDER SEAL SINCE THE
 8 PRESENTATION JUST REFERRED TO THE PAGE AND LINE AND DIDN'T
 9 NECESSARILY REVEAL THE UNDERLYING CODE.

10 SO WE FILED THAT MOTION FOR PERMISSION TO SUBMIT UNDER
 11 SEAL. THEY REVIEWED OUR SOURCE CODE SUBMISSION, HAVE APPROVED
 12 IT, AND SO WE WILL PROVIDE THAT AS WELL TO MS. RILEY AND SEEK
 13 TO OFFER THAT AT THIS TIME.

14 **THE COURT:** OKAY. DID YOU FILE A SEALING ORDER?

15 **MS. GLAUSER:** WE DID.

16 **THE COURT:** SO I CAN DO THAT ONLINE AS WELL.

17 **MS. GLAUSER:** YES.

18 AND THEN THE LAST ONE, YOUR HONOR, IS WE FILED AN OFFER OF
 19 PROOF REGARDING TRIAL EXHIBIT 179. WE HAVE OFFERED IT DURING
 20 TRIAL, AND THERE WAS NO OBJECTION BY ADOBE. YOUR HONOR RULED
 21 THAT WE MAY NOT NEED ALL OF THE PAGES, SO WE HAVE NOW LIMITED
 22 IT TO JUST THREE PAGES.

23 THIS IS THE EXHIBIT THAT HAD THE TOOLBAR THAT INDICATED
 24 ONLY THE MOST COMMON FEATURES WERE PROVIDED ON THE TOOLBAR.
 25 WE ARE ONLY SEEKING TO OFFER THREE PAGES FROM THAT EXHIBIT.

1 ADOBE IS NOW OBJECTING TO IT, AND SO WE SUBMITTED AN OFFER
2 OF PROOF TO NOW MOVE THOSE THREE PAGES OF EXHIBIT 179 INTO
3 EVIDENCE.

4 **MR. REINES:** THAT WAS THE SITUATION WHERE THE WITNESS
5 DIDN'T KNOW ABOUT THE DOCUMENT AT ALL. THE COURT DID NOT
6 APPROVE IT AND DID NOT TAKE IT UNDER SUBMISSION.

7 AND WE WOULD OBJECT. IT'S THAT COMPLICATED STRUCTURE THAT
8 HAS NO FOUNDATION.

9 **THE COURT:** WELL, ISN'T IT JUST A SCREEN SHOT OF THE
10 MENU DROP DOWN?

11 **MS. GLAUSER:** YES, IT IS A SCREEN SHOT FROM ADOBE'S
12 WEBSITE. AND MR. HERBACH WAS ABLE TO TESTIFY ABOUT WHAT WAS
13 HAPPENING ON THAT EXHIBIT. THERE WAS NO OBJECTION FROM ADOBE.
14 AND WE CITED IN OUR OFFER OF PROOF THE LINES FROM THE TRIAL
15 TRANSCRIPT WHERE YOUR HONOR TOOK IT UNDER SUBMISSION.

16 **THE COURT:** WHAT ARE THE PAGES YOU WANT?

17 **MS. GLAUSER:** IT'S THE PAGES OF THE EXHIBIT THAT WE
18 WANT ARE 179.001 TO 179.003.

19 **THE COURT:** AND THESE ARE PAGES FROM AN ONLINE MANUAL
20 OR SOMETHING LIKE THAT OF ADOBE'S, RIGHT?

21 **MR. REINES:** I DON'T KNOW WHEN THEY TOOK THE SCREEN
22 SHOTS. AND WE DIDN'T HAVE ANY WITNESS SAY WHEN IT WAS TAKEN,
23 WHAT IT WAS IS AN ACCURATE REPRESENTATION --

24 **THE COURT:** IT'S NOT A FORGERY. IT WAS TAKEN FROM
25 SOMETHING.

1 **MS . GLAUSER:** YOUR HONOR, THE PARTIES HAVE STIPULATED
2 THAT THE DOCUMENTS PRODUCED BY THE PARTY FROM THEIR OWN
3 POSSESSIONS ARE AUTHENTIC. SO THERE'S NO AUTHENTICITY
4 OBJECTION TO THIS EXHIBIT.

5 **THE COURT:** OKAY. I WILL ALLOW IT.

6 (PLAINTIFF'S EXHIBITS 179.001 - 179.003 RECEIVED IN
7 EVIDENCE)

8 **THE COURT:** IS THAT IT?

9 **MS . GLAUSER:** I BELIEVE THOSE ARE ALL THE OUTSTANDING
10 EVIDENTIARY ISSUES.

11 **MR. REINES:** YES. ONE THING WE WOULD ASK, AND I KNOW
12 YOU ARE WORKING VERY HARD ON IT AND TRYING TO DO IT AS QUICKLY
13 AS YOU CAN, BUT TO THE EXTENT THE JURY INSTRUCTIONS GET
14 FINALIZED, IF THEY CAN BE E-FILED WITH THE COURT SO THAT WE
15 HAVE ACCESS TO THEM FOR OUR PURPOSES?

16 **THE COURT:** SURE.

17 **MR. REINES:** THAT WOULD BE A CONVENIENCE. THAT WOULD
18 BE APPRECIATED VERY MUCH.

19 **THE COURT:** SURE.

20 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

21 **THE COURT:** PLEASE BE SEATED.

22 **MEMBERS OF THE JURY:** NOW THAT YOU HAVE HEARD ALL OF THE
23 EVIDENCE, IT IS MY DUTY TO INSTRUCT YOU AS TO THE LAW OF THE
24 CASE.

25 A COPY OF THESE INSTRUCTIONS WILL BE SENT WITH YOU TO THE

1 JURY ROOM WHEN YOU DELIBERATE. THESE FINAL INSTRUCTIONS
2 CONTROL AND YOU SHOULD NOT CONCERN YOURSELF WITH ANY
3 DIFFERENCES BETWEEN THEM AND THE PRELIMINARY INSTRUCTIONS.
4 YOU MUST NOT INFER FROM THESE INSTRUCTIONS OR FROM ANYTHING I
5 MAY SAY OR DO THAT I HAVE AN OPINION REGARDING THE EVIDENCE OR
6 WHAT YOUR VERDICT SHOULD BE.

7 IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE EVIDENCE IN
8 THE CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE IT
9 TO YOU. YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU WHETHER
10 YOU AGREE WITH IT OR NOT. AND YOU MUST NOT BE INFLUENCED BY
11 ANY PERSONAL LIKES OR DISLIKES, OPINIONS, PREJUDICES, OR
12 SYMPATHY. THAT MEANS YOU MUST DECIDE THE CASE SOLELY ON THE
13 EVIDENCE BEFORE YOU. YOU WILL RECALL THAT YOU TOOK AN OATH TO
14 DO SO.

15 IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM
16 AND NOT SINGLE OUT SOME AND IGNORE OTHERS; THEY ARE ALL
17 IMPORTANT.

18 THE EVIDENCE YOU ARE TO CONSIDER IN DECIDING WHAT THE
19 FACTS ARE CONSISTS OF:

20 THE SWORN TESTIMONY OF ANY WITNESS;

21 THE EXHIBITS RECEIVED INTO EVIDENCE;

22 ANY FACTS TO WHICH THE PARTIES HAVE AGREED.

23 IN REACHING YOUR VERDICT, YOU MAY CONSIDER ONLY THE
24 TESTIMONY AND EXHIBITS RECEIVED INTO EVIDENCE AND ANY FACTS TO
25 WHICH THE PARTIES HAVE AGREED. CERTAIN THINGS ARE NOT

1 EVIDENCE, AND YOU MAY NOT CONSIDER THEM IN DECIDING WHAT THE
2 FACTS ARE. I WILL LIST THEM FOR YOU.

3 ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE. THE
4 LAWYERS ARE NOT WITNESSES. WHAT THEY SAID IN THEIR OPENING
5 STATEMENTS, WILL SAY IN THEIR CLOSING ARGUMENTS, AND AT OTHER
6 TIMES IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT
7 IS NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER
8 FROM THE WAY THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM
9 CONTROLS.

10 QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT EVIDENCE.
11 ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY
12 BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE.
13 YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR BY THE
14 COURT'S RULING ON IT.

15 TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR THAT YOU
16 HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT EVIDENCE AND MUST
17 NOT BE CONSIDERED.

18 ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN COURT WAS NOT IN
19 SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON
20 THE EVIDENCE RECEIVED AT THE TRIAL.

21 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL. DIRECT EVIDENCE
22 IS DIRECT PROOF OF A FACT, SUCH AS TESTIMONY BY A WITNESS
23 ABOUT WHAT THAT WITNESS PERSONALLY SAW OR HEARD OR
24 DID. CIRCUMSTANTIAL EVIDENCE IS PROOF OF ONE OR MORE FACTS FROM
25 WHICH YOU COULD FIND ANOTHER FACT. YOU SHOULD CONSIDER BOTH

KINDS OF EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT IS FOR YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY EVIDENCE.

BEFORE YOU DECIDE THAT A FACT HAS BEEN PROVED BY CIRCUMSTANTIAL EVIDENCE, YOU MUST CONSIDER ALL THE EVIDENCE IN THE LIGHT OF REASON, EXPERIENCE AND COMMON SENSE.

THERE ARE RULES OF EVIDENCE THAT CONTROL WHAT CAN BE RECEIVED INTO EVIDENCE. WHEN A LAWYER ASKED A QUESTION OR OFFERED AN EXHIBIT INTO EVIDENCE AND A LAWYER ON THE OTHER SIDE THOUGHT THAT IT WAS NOT PERMITTED BY THE RULES OF EVIDENCE, THAT LAWYER MAY HAVE OBJECTED. IF I OVERRULED THE OBJECTION, THE QUESTION WAS ANSWERED OR THE EXHIBIT RECEIVED. IF I SUSTAINED THE OBJECTION, THE QUESTION WAS NOT ANSWERED, OR THE EXHIBIT WAS NOT RECEIVED. WHENEVER I SUSTAIN AN OBJECTION TO A QUESTION, YOU MUST IGNORE THE QUESTION AND MUST NOT GUESS WHAT THE ANSWER MIGHT HAVE BEEN.

IN DECIDING THE FACTS IN THIS CASE, YOU MAY HAVE TO DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH TESTIMONY NOT TO BELIEVE. YOU MAY BELIEVE EVERYTHING A WITNESS SAYS, OR PART OF IT, OR NONE OF IT. PROOF OF A FACT, OR THE WEIGHT OF THE EVIDENCE AS TO A FACT, DOES NOT NECESSARILY DEPEND UPON THE NUMBER OF WITNESSES WHO TESTIFY.

IN CONSIDERING THE TESTIMONY OF ANY WITNESSES, YOU MAY TAKE INTO ACCOUNT:

1 ONE, THE OPPORTUNITY AND ABILITY OF THE WITNESS TO SEE OR
2 HEAR OR KNOW THE THINGS TESTIFIED TO;

3 TWO, THE WITNESS' MEMORY;

4 THREE, THE WITNESS' MANNER WHILE TESTIFYING;

5 FOUR, THE WITNESS' INTEREST IN THE OUTCOME OF THE CASE AND
6 ANY BIAS OR PREJUDICE;

7 FIVE, WHETHER OTHER EVIDENCE CONTRADICTED THE WITNESS'
8 TESTIMONY;

9 SIX, WHETHER THE WITNESS GAVE DIFFERENT TESTIMONY ON A
10 PRIOR OCCASION;

11 SEVEN, THE REASONABLENESS OF THE WITNESS' TESTIMONY IN
12 LIGHT OF ALL THE EVIDENCE; AND

13 ANY OTHER FACTORS THAT BEAR ON BELIEVABILITY.

14 THE EVIDENCE THAT A WITNESS LIED UNDER OATH OR GAVE
15 DIFFERENT TESTIMONY ON A PRIOR OCCASION MAY BE CONSIDERED,
16 ALONG WITH ALL OTHER EVIDENCE, IN DECIDING WHETHER OR NOT TO
17 BELIEVE THE WITNESS AND HOW MUCH WEIGHT TO GIVE THE TESTIMONY
18 OF THE WITNESS AND FOR NO OTHER PURPOSE. IF YOU BELIEVE THAT
19 A WITNESS TESTIFIED FALSELY CONCERNING ANY IMPORTANT MATTER,
20 YOU MAY DISTRUST THE WITNESS' TESTIMONY CONCERNING OTHER
21 MATTERS. YOU MAY REJECT ALL OF THE TESTIMONY OR YOU MAY
22 ACCEPT SUCH PARTS OF THE TESTIMONY THAT YOU BELIEVE ARE TRUE
23 AND GIVE IT SUCH WEIGHT AS YOU THINK IT DESERVES.

24 SOME WITNESSES, BECAUSE OF EDUCATION OR EXPERIENCE, ARE
25 PERMITTED TO STATE OPINIONS AND THE REASONS FOR THOSE

1 OPINIONS. OPINION TESTIMONY SHOULD BE JUDGED JUST LIKE ANY
2 OTHER TESTIMONY. YOU MAY ACCEPT IT OR REJECT IT, AND GIVE IT
3 AS MUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE
4 WITNESS' EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE
5 OPINION, AND ALL THE OTHER EVIDENCE IN THE CASE.

6 DIGITAL REG'S EXPERT, DAMAGES EXPERT, MR. PARR, TESTIFIED
7 THAT THE INTUIT LICENSE AGREEMENT HAD AN EFFECTIVE ROYALTY
8 RATE OF 2.5 PERCENT BASED ON A DISCUSSION HE REPORTS HAVING
9 WITH MR. FARLEY OF DIGITAL REG. THIS TESTIMONY MAY BE
10 CONSIDERED SOLELY AS A BASIS FOR MR. PARR'S OPINION AND NOT AS
11 SUBSTANTIVE EVIDENCE OF THAT RATE.

12 A DEPOSITION IS THE SWORN TESTIMONY OF A WITNESS TAKEN
13 BEFORE TRIAL. THE WITNESS IS PLACED UNDER OATH TO TELL THE
14 TRUTH AND LAWYERS FOR EACH PARTY MAY ASK QUESTIONS. THE
15 QUESTIONS AND ANSWERS ARE RECORDED. THE COURT REPORTER TAKES
16 CUSTODY OF THE DOCUMENTS THAT ARE DISCUSSED, ALTHOUGH THE
17 PARTIES KEEP THEIR OWN COPIES. A COPY OF THE TRANSCRIPT IS
18 MADE AVAILABLE TO THE WITNESS, WHO THEN HAS AN OPPORTUNITY TO
19 MAKE CORRECTIONS.

20 YOU SHOULD CONSIDER DEPOSITION TESTIMONY, PRESENTED TO YOU
21 IN COURT IN LIEU OF LIVE TESTIMONY, INSOFAR AS POSSIBLE, IN
22 THE SAME WAY AS IF THE WITNESS HAD BEEN PRESENT TO TESTIFY.

23 BECAUSE YOU MUST BASE YOUR VERDICT ONLY ON THE EVIDENCE
24 RECEIVED IN THE CASE AND ON THESE INSTRUCTIONS, I REMIND YOU
25 THAT YOU MUST NOT BE EXPOSED TO ANY OTHER INFORMATION ABOUT

1 THE CASE OR ABOUT THE ISSUES IT INVOLVES. EXCEPT FOR
2 DISCUSSING THE CASE WITH YOUR FELLOW JURORS DURING YOUR
3 DELIBERATIONS:

4 DO NOT COMMUNICATE WITH ANYONE IN ANY WAY AND DO NOT LET
5 ANYONE ELSE COMMUNICATE WITH YOU IN ANY WAY ABOUT THE MERITS
6 OF THE CASE OR ANYTHING TO DO WITH IT. THIS INCLUDES
7 DISCUSSING THE CASE IN PERSON, IN WRITING, BY PHONE OR
8 ELECTRONIC MEANS, VIA EMAIL, TEXT MESSAGING, OR ANY INTERNET
9 CHAT ROOM, BLOG, WEBSITE OR OTHER FEATURE. YOU MAY NOT
10 COMMUNICATE ABOUT THE TRIAL WITH YOUR FAMILY MEMBERS OR YOUR
11 EMPLOYER, ALTHOUGH YOU MAY INFORM THEM THAT YOU HAVE BEEN
12 SEATED AS A JUROR IN THE CASE. YOU MAY NOT COMMUNICATE WITH
13 THE PEOPLE INVOLVED IN THE TRIAL. IF YOU ARE ASKED OR
14 APPROACHED IN ANY WAY ABOUT YOUR JURY SERVICE OR ABOUT
15 ANYTHING ABOUT THIS CASE, YOU MUST RESPOND THAT YOU HAVE BEEN
16 ORDERED NOT TO DISCUSS THE MATTER AND TO REPORT THE CONTACT TO
17 THE COURT. YOU MAY COMMUNICATE WITH YOUR FELLOW JURORS
18 PROVIDED THAT ALL THE JURORS ARE PRESENT FOR THE DISCUSSION
19 AND THE DISCUSSION OCCURS IN THE JURY ROOM WITH THE DOOR
20 CLOSED.

21 DO NOT READ, WATCH, OR LISTEN TO ANY NEWS OR MEDIA
22 ACCOUNTS OR COMMENTARY ABOUT THE CASE OR ANYTHING TO DO WITH
23 IT; DO NOT DO ANY RESEARCH, SUCH AS CONSULTING DICTIONARIES,
24 SEARCHING THE INTERNET OR USING OTHER REFERENCE MATERIALS, AND
25 DO NOT MAKE ANY INVESTIGATION OR IN ANY OTHER WAY TRY TO LEARN

1 ABOUT THE CASE ON YOUR OWN.

2 THE LAW REQUIRES THESE RESTRICTIONS TO ENSURE THAT THE
3 PARTIES HAVE A FAIR TRIAL BASED ON THE SAME EVIDENCE THAT EACH
4 PARTY HAS AN OPPORTUNITY TO ADDRESS. A JUROR WHO VIOLATES
5 THESE RESTRICTIONS JEOPARDIZES THE FAIRNESS OF THESE
6 PROCEEDINGS, AND A MISTRIAL COULD RESULT THAT WOULD REQUIRE
7 THE ENTIRE TRIAL PROCESS TO START OVER. IF ANY JUROR IS
8 EXPOSED TO ANY OUTSIDE INFORMATION, PLEASE NOTIFY THE COURT
9 IMMEDIATELY.

10 I WILL NEXT GIVE YOU A SUMMARY OF EACH SIDE'S CONTENTIONS
11 IN THIS CASE. I WILL THEN TELL YOU WHAT EACH SIDE MUST PROVE
12 ON EACH OF ITS CONTENTIONS. AS I PREVIOUSLY TOLD YOU, DIGITAL
13 REG SEEKS MONEY DAMAGES FROM ADOBE FOR ALLEGEDLY INFRINGING
14 THE '541 PATENT AND THE '670 PATENT IN THAT ADOBE AND USERS OF
15 ITS SOFTWARE PRACTICED METHODS CLAIMED IN DIGITAL REG'S
16 PATENTS. THE ASSERTED CLAIMS ARE CLAIMS 1, 2, 4 AND 13 OF THE
17 '541 PATENT, AND CLAIMS 45 AND 52 OF THE '670 PATENT. THE
18 ACCUSED PRODUCTS ARE THE ADOBE FLASH PLATFORM, LIVECYCLE, AND
19 SOFTWARE ACTIVATION SERVICES. DIGITAL REG ARGUES THAT ADOBE
20 INFRINGED ITS PATENTS AND INDUCED INFRINGEMENT BY USERS OF
21 THESE PRODUCTS. DIGITAL REG ALSO CONTENDS THAT ADOBE'S
22 INFRINGEMENT OF THE '541 AND '670 PATENTS WAS WILLFUL.

23 ADOBE DENIES THAT IT HAS INFRINGED ANY OF THE ASSERTED
24 CLAIMS OF THE '541 AND '670 PATENTS. ADOBE ARGUES THAT THE
25 ASSERTED CLAIMS, ALONG WITH CLAIM 32 OF THE '670 PATENT, ARE

1 INVALID.

2 YOUR JOB IS TO DECIDE WHETHER THE ASSERTED CLAIMS OF THE
3 '541 AND '670 PATENTS ARE VALID AND HAVE BEEN INFRINGED BY
4 ADOBE'S ACCUSED PRODUCTS.

5 IF YOU DECIDE THAT ANY CLAIM OF THE ASSERTED PATENTS IS
6 NOT INVALID AND HAS BEEN INFRINGED, THEN YOU WILL NEED TO
7 DECIDE THE MONEY DAMAGES TO BE AWARDED TO DIGITAL REG TO
8 COMPENSATE IT FOR THE INFRINGEMENT. YOU WILL ALSO NEED TO
9 DECIDE WHETHER THE INFRINGEMENT WAS WILLFUL. IF YOU DECIDE
10 THAT ANY INFRINGEMENT WAS WILLFUL, THAT DECISION SHOULD NOT
11 AFFECT ANY DAMAGES AWARD THAT YOU GIVE. I WILL TAKE
12 WILLFULNESS INTO ACCOUNT LATER.

13 AS I MENTIONED EARLIER, THE PATENT CLAIMS ARE NUMBERED
14 SENTENCES AT THE END OF THE PATENT THAT DESCRIBE THE
15 BOUNDARIES OF THE PATENT'S PROTECTION. IT IS MY JOB AS JUDGE
16 TO EXPLAIN TO YOU THE MEANING OF ANY LANGUAGE IN THE CLAIMS
17 THAT NEEDS INTERPRETATION.

18 I HAVE ALREADY DETERMINED THE MEANING OF CERTAIN TERMS OF
19 THE CLAIMS OF THE '541 AND '670 PATENTS. ATTACHED TO THE
20 WRITTEN COPY OF THE INSTRUCTIONS THAT YOU WILL BE GIVEN IS A
21 DOCUMENT REFLECTING THOSE MEANINGS. YOU MUST ACCEPT THOSE
22 INTERPRETATIONS AS CORRECT. HOWEVER, MY INTERPRETATION OF THE
23 LANGUAGE OF THE CLAIMS SHOULD NOT BE TAKEN AS AN INDICATION
24 THAT I HAVE A VIEW REGARDING ISSUES SUCH AS INFRINGEMENT AND
25 INVALIDITY. THE DECISIONS REGARDING INFRINGEMENT AND

1 INVALIDITY ARE YOURS TO MAKE.

2 TO PROVE INFRINGEMENT OF ANY CLAIM, DIGITAL REG MUST
3 PERSUADE YOU THAT IT IS MORE LIKELY THAN NOT THAT ADOBE
4 INFRINGED THAT CLAIM. A PATENT'S CLAIMS DEFINE WHAT IS
5 COVERED BY THE PATENT. YOU MUST DECIDE WHETHER ADOBE HAS USED
6 WITHIN THE UNITED STATES A METHOD COVERED BY A CLAIM OF
7 DIGITAL REG'S PATENTS. IF ADOBE HAS DONE SO, IT INFRINGES.

8 YOU MUST CONSIDER EACH OF THE ASSERTED CLAIMS OF THE
9 PATENT INDIVIDUALLY, AND DECIDE WHETHER ADOBE PRACTICES EVERY
10 REQUIREMENT OF THAT CLAIM. CLAIM 1 OF THE '541 PATENT, AND
11 CLAIMS 32 AND 45 OF THE '670 PATENT, ARE KNOWN AS INDEPENDENT
12 CLAIMS. INDEPENDENT CLAIMS CONTAIN A NUMBER OF REQUIREMENTS
13 THAT MUST BE SATISFIED TO SHOW INFRINGEMENT. CLAIMS 2, 4, AND
14 13 OF THE '541 PATENT, AND CLAIM 52 OF THE '670 PATENT ARE
15 KNOWN AS DEPENDENT CLAIMS. A DEPENDENT CLAIM INCLUDES ALL OF
16 THE REQUIREMENTS OF THE INDEPENDENT CLAIM TO WHICH IT REFERS,
17 PLUS ADDITIONAL REQUIREMENTS OF ITS OWN. FOR EXAMPLE, CLAIM 2
18 OF THE '541 PATENT INCORPORATES EVERY REQUIREMENT CONTAINED IN
19 "THE METHOD OF CLAIM 1," BUT ALSO CONTAINS ADDITIONAL
20 REQUIREMENTS THAT MUST BE SATISFIED TO FIND INFRINGEMENT OF
21 CLAIM 2. AS A RESULT, IF YOU FIND THAT AN INDEPENDENT CLAIM
22 IS NOT INFRINGED, YOU MUST ALSO FIND THAT ITS DEPENDENT CLAIMS
23 ARE NOT INFRINGED AS WELL. ON THE OTHER HAND, IF YOU FIND
24 THAT AN INDEPENDENT CLAIM HAS BEEN INFRINGED, YOU MUST STILL
25 SEPARATELY DECIDE WHETHER THE ADDITIONAL REQUIREMENTS OF ITS

1 DEPENDENT CLAIMS HAVE ALSO BEEN INFRINGED.

2 THE CLAIMS AT ISSUE ARE METHOD CLAIMS. METHOD CLAIMS ARE
3 ONLY INFRINGED WHEN THE CLAIMED PROCESS IS INFRINGED, NOT BY
4 THE SALE OF THE APPARATUS THAT IS CAPABLE OF INFRINGING USE.

5 IN THIS CASE, DIGITAL REG ARGUES THAT ADOBE INFRINGED ITS
6 PATENTS BOTH DIRECTLY AND INDIRECTLY. TO DECIDE WHETHER ADOBE
7 DIRECTLY INFRINGES A CLAIM OF DIGITAL REG'S PATENTS, YOU MUST
8 COMPARE ACTIONS BY ADOBE WITH THE PATENT CLAIM AND DETERMINE
9 WHETHER EVERY REQUIREMENT OF THE CLAIM WAS CARRIED OUT BY
10 ADOBE. IF SO, ADOBE DIRECTLY INFRINGES THAT CLAIM. WHETHER
11 OR NOT ADOBE KNEW ITS PRODUCTS INFRINGED OR EVEN KNEW OF THE
12 PATENT DOES NOT MATTER IN DETERMINING DIRECT INFRINGEMENT.

13 EVEN IF ADOBE DOES NOT ITSELF CARRY OUT EVERY REQUIREMENT
14 IN THE PATENT CLAIM, ADOBE CANNOT ESCAPE LIABILITY FOR DIRECT
15 INFRINGEMENT IF IT DIRECTED OR CONTROLLED OTHER PARTIES TO
16 CARRY OUT THE MISSING REQUIREMENTS. ADOBE DOES NOT DIRECT OR
17 CONTROL ANOTHER PARTIES' ACTIONS MERELY BECAUSE ADOBE ENTERED
18 INTO A BUSINESS RELATIONSHIP WITH THAT PARTY. INSTEAD, ADOBE
19 MUST SPECIFICALLY INSTRUCT OR CAUSE THAT OTHER PERSON TO
20 PERFORM EACH STEP IN AN INFRINGING MANNER, SO THAT EVERY STEP
21 IS ATTRIBUTABLE TO ADOBE AS THE CONTROLLING PARTY.

22 DIGITAL REG ALSO ALLEGES THAT ADOBE INDIRECTLY INFRINGED
23 AND CONTINUES TO INDIRECTLY INFRINGE DIGITAL REG'S PATENTS BY
24 INDUCING INFRINGEMENT. THE ACT OF ENCOURAGING OR INDUCING
25 OTHERS TO INFRINGE A PATENT IS CALLED "INDUCING INFRINGEMENT."

1 IN ORDER FOR ADOBE TO INDUCE INFRINGEMENT, ONE OR MORE
2 INDIVIDUALS OR COMPANIES, ACTING ALONE OR COLLECTIVELY, MUST
3 DIRECTLY INFRINGE THE ASSERTED PATENT; IF THERE IS NO DIRECT
4 INFRINGEMENT BY ANYONE, THERE CAN BE NO INDUCED INFRINGEMENT.
5 IN ORDER TO BE LIABLE FOR INDUCEMENT OF INFRINGEMENT, ADOBE
6 MUST HAVE:

7 ONE, INTENTIONALLY TAKEN ACTION THAT ACTUALLY INDUCED
8 DIRECT INFRINGEMENT BY EACH INDIVIDUAL OR COMPANY;

9 TWO, BEEN AWARE OF THE ASSERTED PATENT;

10 THREE, KNOWN THAT THE ACTS IT WAS CAUSING WOULD BE
11 INFRINGEMENT;

12 AND, FOUR, NOT HAD A GOOD FAITH BELIEF THAT THE PATENT WAS
13 INVALID.

14 THE KNOWLEDGE AND AWARENESS REQUIREMENTS FOR INDUCEMENT
15 CAN BE SATISFIED BY SHOWING THAT ADOBE DEMONSTRATED DELIBERATE
16 DISREGARD OR WAS WILLFULLY BLIND. IF ADOBE DID NOT KNOW OF
17 THE EXISTENCE OF THE PATENT IN QUESTION OR THAT THE FACT -- OR
18 THAT THE ACTS IT WAS INDUCING WERE INFRINGING, IT CAN BE
19 LIABLE FOR INDUCEMENT ONLY IF IT ACTUALLY BELIEVED IT WAS
20 HIGHLY PROBABLE ITS ACTIONS WOULD ENCOURAGE INFRINGEMENT OF A
21 PATENT AND IT TOOK INTENTIONAL ACTS TO AVOID LEARNING THE
22 TRUTH. IT IS NOT ENOUGH THAT ADOBE WAS MERELY INDIFFERENT TO
23 THE POSSIBILITY THAT IT MIGHT ENCOURAGE INFRINGEMENT OF A
24 PATENT. NOR IS IT ENOUGH THAT ADOBE TOOK A RISK THAT WAS
25 SUBSTANTIAL AND UNJUSTIFIED.

1 IF YOU FIND THAT ADOBE WAS AWARE OF AN ASSERTED PATENT,
2 BUT BELIEVED THAT THE ACTS IT ENCOURAGED DID NOT INFRINGE THAT
3 PATENT, OR THAT THE PATENT WAS INVALID, THEN ADOBE CANNOT BE
4 LIABLE FOR INDUCING INFRINGEMENT.

5 IN THIS CASE, AS I'VE MENTIONED, DIGITAL REG ARGUES THAT
6 ADOBE WILLFULLY INFRINGED ITS PATENTS.

7 TO PROVE WILLFUL INFRINGEMENT, DIGITAL REG MUST FIRST
8 PERSUADE YOU THAT ADOBE INFRINGED A CLAIM OF ITS PATENTS.

9 IN ADDITION, TO PROVE WILLFUL INFRINGEMENT, DIGITAL REG
10 MUST PERSUADE YOU THAT IT IS HIGHLY PROBABLE THAT ADOBE ACTED
11 WITH RECKLESS DISREGARD OF THE PATENT IT INFRINGED. THE STATE
12 OF MIND OF ADOBE IS RELEVANT TO THIS INQUIRY. TO DEMONSTRATE
13 SUCH RECKLESS DISREGARD, DIGITAL REG MUST PERSUADE YOU THAT
14 ADOBE ACTUALLY KNEW, OR IT WAS SO OBVIOUS THAT ADOBE SHOULD
15 HAVE KNOWN THAT ITS ACTIONS CONSTITUTED INFRINGEMENT OF A
16 VALID PATENT.

17 IN DECIDING WHETHER ADOBE ACTED WITH RECKLESS DISREGARD
18 FOR ANY PATENT THAT YOU FIND IS INFRINGED, YOU SHOULD CONSIDER
19 ALL OF THE FACTS SURROUNDING THE ALLEGED INFRINGEMENT
20 INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING FACTORS:

21 ONE, WHETHER ADOBE ACTED IN A MANNER CONSISTENT WITH THE
22 STANDARDS OF COMMERCE FOR THE INDUSTRY.

23 ARE YOU OKAY?

24 TWO, WHETHER ADOBE INTENTIONALLY COPIED DIGITAL REG'S
25 PATENT.

1 THREE, WHETHER ADOBE HAD A REASONABLE BASIS TO BELIEVE
 2 THAT IT DID NOT INFRINGE OR HAD A REASONABLE DEFENSE TO
 3 INFRINGEMENT.

4 WITH REGARD TO WILLFULNESS, DIGITAL REG CLAIMS, AMONG
 5 OTHER THINGS, THAT MR. VENTERS MET WITH ADOBE VENTURES IN THE
 6 SUMMER OF 2004 AND TOLD THEM ABOUT THE PATENTS. MR. VENTERS
 7 STATES THAT THE MEETING WAS NOT IN JUNE OF 2004, BUT RATHER
 8 SOMETIME LATER. MR. VENTERS TESTIFIED THAT HE SENT TO ADOBE
 9 VENTURES A DOCUMENT ENTITLED ADOBE VALUE PROPOSITION. SUCH A
 10 DOCUMENT WAS ADMITTED AS TRIAL EXHIBIT 125C. DIFFERENT DRAFTS
 11 OF THIS DOCUMENT EXIST, AND WHILE MR. VENTERS STATES A VERSION
 12 WAS SENT TO ADOBE VENTURES, HE CANNOT IDENTIFY THE PARTICULAR
 13 VERSION. THE INFORMATION MR. VENTERS STATES WAS SENT TO ADOBE
 14 VENTURES IS SET FORTH IN TRIAL EXHIBIT 696, WHICH WILL BE
 15 RECEIVED IN EVIDENCE IN PLACE OF TRIAL EXHIBIT 125C. ADOBE
 16 CONTENDS THAT THE CONFUSION OVER WHICH DOCUMENT WAS SENT AND
 17 WHEN SUPPORTS ITS PROPOSITION THAT THE EVIDENCE DOES NOT PROVE
 18 THAT ANY VERSION WAS SENT.

19 I WILL NOW INSTRUCT YOU ON THE RULES YOU MUST FOLLOW IN
 20 DECIDING WHETHER ADOBE HAS PROVEN THAT CLAIMS 1, 2, 4, AND 13
 21 OF THE '541 PATENT AND CLAIMS 32, 45 AND 52 OF THE '670 PATENT
 22 ARE INVALID. TO PROVE INVALIDITY OF ANY PATENT CLAIM, ADOBE
 23 MUST PERSUADE YOU BY CLEAR AND CONVINCING EVIDENCE THAT THE
 24 CLAIM IS INVALID.

25 DURING THIS CASE, ADOBE HAS SUBMITTED PRIOR ART, SOME OF

1 WHICH WAS AND SOME OF WHICH WAS NOT CONSIDERED BY THE UNITED
2 STATES PATENT AND TRADEMARK OFFICE, OR PTO, DURING THE
3 PROSECUTION OF THE '541 AND '670 PATENTS. ADOBE CONTENDS THAT
4 THIS PRIOR ART INVALIDATES THE CLAIMS OF THE '541 AND '670
5 PATENTS. IN DECIDING THE ISSUE OF INVALIDITY, YOU MAY TAKE
6 INTO ACCOUNT WHETHER THE PRIOR ART WAS CONSIDERED BY THE PTO
7 WHEN IT ISSUED THE '541 AND '670 PATENTS. PRIOR ART THAT
8 DIFFERS FROM THE PRIOR ART CONSIDERED BY THE PTO MAY CARRY
9 MORE WEIGHT THAN THE PRIOR ART THAT WAS CONSIDERED AND MAY
10 MAKE ADOBE'S BURDEN OF SHOWING THAT IT IS HIGHLY PROBABLE THAT
11 A PATENT CLAIM IS INVALID EASIER TO SUSTAIN.

12 A PATENT CLAIM IS INVALID IF ADOBE DEMONSTRATES THAT THE
13 CLAIMED INVENTION IS NOT NEW. THE CLAIMED INVENTION IS NOT
14 NEW IF THE PATENT'S REQUIREMENTS EXISTED IN A SINGLE DEVICE OR
15 METHOD THAT PREDATES THE CLAIMED INVENTION, OR IF ALL OF ITS
16 REQUIREMENTS WERE DESCRIBED IN A SINGLE PREVIOUS PUBLICATION
17 OR PATENT THAT PREDATES THE CLAIMED INVENTION. IN PATENT LAW,
18 THESE PREVIOUS DEVICES, METHODS, PUBLICATIONS OR PATENTS ARE
19 CALLED "PRIOR ART REFERENCES." IF A PATENT CLAIM IS NOT NEW
20 WE SAY IT IS "ANTICIPATED" BY A PRIOR ART REFERENCE.

21 THE DESCRIPTION IN THE WRITTEN REFERENCE DOES NOT HAVE TO
22 BE IN THE SAME WORDS AS THE CLAIM, BUT ALL OF THE REQUIREMENTS
23 OF THE CLAIM MUST BE THERE, THERE STATED OR NECESSARILY
24 IMPLIED, SO THAT SOMEONE OF ORDINARY SKILL IN THE FIELD
25 LOOKING AT THAT ONE REFERENCE WOULD BE ABLE TO MAKE AND USE

1 THE CLAIMED INVENTION.

2 HERE'S A LIST OF WAYS THAT ADOBE CAN SHOW THAT A PATENT
3 CLAIM WAS NOT NEW:

4 ONE, THE CLAIMED INVENTION WAS ALREADY PUBLICLY KNOWN OR
5 PUBLICLY USED BY OTHERS IN THE UNITED STATES BEFORE MAY 15TH,
6 1997;

7 TWO, THE CLAIMED INVENTION WAS ALREADY PATENTED OR
8 DESCRIBED IN A PRINTED PUBLICATION ANYWHERE IN THE WORLD
9 BEFORE MAY 15TH, 1997. A REFERENCE IS A 'PRINTED PUBLICATION'
10 IF IT IS ACCESSIBLE TO THOSE INTERESTED IN THE FIELD, EVEN IF
11 IT IS DIFFICULT TO FIND;

12 THREE, THE CLAIMED INVENTION WAS ALREADY DESCRIBED IN
13 ANOTHER UNITED STATES PATENT APPLICATION, OR A PUBLISHED
14 PATENT THAT WAS BASED ON A PATENT APPLICATION FILED BEFORE
15 MAY 15TH, 1997; OR

16 FOUR, THE CLAIMED INVENTION WAS ALREADY MADE BY SOMEONE
17 ELSE IN THE UNITED STATES BEFORE MAY 15TH, 1997, IF THAT OTHER
18 PERSON HAD NOT ABANDONED THE INVENTION OR KEPT IT SECRET.

19 NOT ALL INNOVATIONS ARE PATENTABLE. A PATENT CLAIM IS
20 INVALID IF IT IS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT
21 THE CLAIMED INVENTION WOULD HAVE BEEN OBVIOUS TO A PERSON OF
22 ORDINARY SKILL IN THE FIELD AT THE TIME OF THE INVENTION.

23 THIS MEANS THAT EVEN IF ALL OF THE REQUIREMENTS OF THE CLAIM
24 CANNOT BE FOUND IN A SINGLE PRIOR ART REFERENCE, A PERSON OF
25 ORDINARY SKILL IN THE FIELD WHO KNEW ABOUT ALL THIS PRIOR ART

1 WOULD HAVE COME UP WITH THE CLAIMED INVENTION.

2 THE ULTIMATE CONCLUSION OF WHETHER A CLAIM IS OBVIOUS
3 SHOULD BE BASED UPON YOUR DETERMINATION OF SEVERAL FACTUAL
4 DECISIONS:

5 ONE, THE LEVELS OF EDUCATION AND EXPERIENCE OF PERSONS
6 WORKING IN THE FIELD;

7 TWO, THE TYPES OF PROBLEMS ENCOUNTERED IN THE FIELD;

8 THREE, THE SOPHISTICATION OF THE TECHNOLOGY.

9 FOUR, THE SCOPE AND CONTENT OF THE PRIOR ART; AND

10 FIVE, WHAT DIFFERENCES, IF ANY, EXISTED BETWEEN THE
11 CLAIMED INVENTION AND THE PRIOR ART.

12 FINALLY, YOU SHOULD BE -- YOU SHOULD CONSIDER ANY OF THE
13 FOLLOWING FACTORS THAT YOU FIND HAVE BEEN SHOWN BY THE
14 EVIDENCE:

15 ONE, COMMERCIAL SUCCESS OF A PRODUCT DUE TO THE MERITS OF
16 THE CLAIMED INVENTION;

17 TWO, A LONG FELT NEED FOR THE SOLUTION PROVIDED BY THE
18 CLAIMED INVENTION;

19 THREE, UNSUCCESSFUL ATTEMPTS BY OTHERS TO FIND THE
20 SOLUTION PROVIDED BY THE CLAIMED INVENTION;

21 FOUR, COPYING OF THE CLAIMED INVENTION BY OTHERS;

22 FIVE, UNEXPECTED AND SUPERIOR RESULTS FROM THE CLAIMED
23 INVENTION;

24 SIX, ACCEPTANCE BY OTHERS OF THE CLAIMED INVENTION AS
25 SHOWN BY PRAISE FROM OTHERS IN THE FIELD OR FROM THE LICENSING

1 OF THE CLAIMED INVENTION; AND

2 SIX, ANY OTHER EVIDENCE TENDING TO SHOW NONOBVIOUSNESS.

3 THE PRESENCE OF ANY OF THESE FACTORS MAY BE CONSIDERED BY
4 YOU AS AN INDICATION THAT THE CLAIMED INVENTION WOULD NOT HAVE
5 BEEN OBVIOUS AT THE TIME THE CLAIMED INVENTION WAS MADE. ON
6 THE OTHER HAND, INDEPENDENT INVENTION OF THE CLAIMED INVENTION
7 BY OTHERS BEFORE OR ABOUT THE SAME TIME AS THE NAMED INVENTOR
8 THOUGHT OF IT, MAY BE CONSIDERED AS AN INDICATION THAT THE
9 CLAIMED INVENTION WOULD HAVE BEEN OBVIOUS AT SUCH TIME.

10 ALTHOUGH YOU SHOULD CONSIDER ANY EVIDENCE OF THESE
11 FACTORS, THE RELEVANCE AND IMPORTANCE OF ANY OF THEM IS UP TO
12 YOU.

13 A PATENT CLAIM COMPOSED OF SEVERAL ELEMENTS IS NOT PROVED
14 OBVIOUS MERELY BY DEMONSTRATING THAT EACH OF ITS ELEMENTS WAS
15 INDEPENDENTLY PRESENT IN THE PRIOR ART. IN EVALUATING WHETHER
16 SUCH A CLAIM WOULD HAVE BEEN OBVIOUS, YOU MAY CONSIDER WHETHER
17 ADOBE HAS IDENTIFIED A REASON THAT WOULD HAVE PROMPTED A
18 PERSON OF ORDINARY SKILL IN THE FIELD TO COMBINE THE ELEMENTS
19 OR CONCEPTS FROM THE PRIOR ART IN THE SAME WAY AS IN THE
20 CLAIMED INVENTION. THERE IS NO SINGLE WAY TO DEFINE THE LINE
21 BETWEEN TRUE INVENTIVENESS ON THE ONE HAND, WHICH IS
22 PATENTABLE, AND THE APPLICATION OF COMMON SENSE AND ORDINARY
23 SKILL TO SOLVE A PROBLEM ON THE OTHER HAND WHICH IS NOT
24 PATENTABLE. HOWEVER, YOU MUST BE CAREFUL NOT TO DETERMINE
25 OBVIOUSNESS USING THE BENEFIT OF HINDSIGHT. SOMETIMES TRUE

1 INVENTIONS MIGHT SEEM OBVIOUS AFTER THE FACT. YOU SHOULD PUT
2 YOURSELF IN THE POSITION OF A PERSON OF ORDINARY SKILL IN THE
3 FIELD AT THE TIME THE CLAIMED INVENTION WAS MADE WHEN
4 CONSIDERING WHETHER THE INVENTION WOULD HAVE BEEN OBVIOUS.

5 I WILL INSTRUCT YOU ABOUT THE MEASURE OF DAMAGES. BY
6 INSTRUCTING YOU ON DAMAGES, I'M NOT SUGGESTING WHICH PARTY
7 SHOULD WIN ON ANY ISSUE. IF YOU FIND THAT ADOBE INFRINGED ANY
8 VALID AND ASSERTED CLAIM OF DIGITAL REG'S PATENTS, YOU MUST
9 THEN DETERMINE THE AMOUNT OF MONEY DAMAGES TO BE AWARDED TO
10 DIGITAL REG TO COMPENSATE IT FOR INFRINGEMENT BY THE USE OF
11 ADOBE'S ACCUSED PRODUCTS.

12 THE AMOUNT OF THOSE DAMAGES MUST BE ADEQUATE TO COMPENSATE
13 DIGITAL REG FOR THE INFRINGEMENT. A DAMAGES AWARD SHOULD PUT
14 THE PATENT HOLDER IN APPROXIMATELY THE FINANCIAL POSITION IT
15 WOULD HAVE BEEN IN HAD THE INFRINGEMENT NOT OCCURRED, BUT IN
16 NO EVENT MAY THE DAMAGES AWARD BE LESS THAN A REASONABLE
17 ROYALTY. YOU SHOULD KEEP IN MIND THAT THE DAMAGES YOU AWARD
18 ARE MEANT TO COMPENSATE THE PATENT HOLDER AND NOT TO PUNISH AN
19 INFRINGEMENT. DIGITAL REG HAS THE BURDEN TO PERSUADE YOU OF THE
20 AMOUNT OF ITS DAMAGES. YOU SHOULD AWARD ONLY THOSE DAMAGES
21 THAT DIGITAL REG MORE LIKELY THAN NOT SUFFERED. WHILE DIGITAL
22 REG IS NOT REQUIRED TO PROVE ITS DAMAGES WITH MATHEMATICAL
23 PRECISION, IT MUST PROVE THEM WITH REASONABLE CERTAINTY.
24 DIGITAL REG IS NOT ENTITLED TO DAMAGES THAT ARE REMOTE OR
25 SPECULATIVE.

1 IN THIS CASE, DIGITAL REG SEEKS TO RECOVER A REASONABLE
2 ROYALTY BASED ON ADOBE'S ALLEGED INFRINGEMENT OF THE ASSERTED
3 CLAIMS. DIGITAL REG SHOULD BE AWARDED AT LEAST A REASONABLE
4 ROYALTY CONSIDERING THE USE OF ADOBE'S PRODUCTS TO PRACTICE
5 THE ASSERTED CLAIMS.

6 A ROYALTY IS A PAYMENT MADE TO A PATENT HOLDER IN EXCHANGE
7 FOR THE RIGHT TO USE THE CLAIMED INVENTION. THIS RIGHT IS
8 CALLED A "LICENSE." A REASONABLE ROYALTY IS THE PAYMENT FOR
9 THE LICENSE THAT WOULD HAVE RESULTED FROM A HYPOTHETICAL
10 NEGOTIATION BETWEEN THE PATENT HOLDER AND THE INFRINGER TAKING
11 PLACE AT THE TIME THE INFRINGING ACTIVITY FIRST BEGAN.

12 IN CONSIDERING THE NATURE OF THIS NEGOTIATION, YOU MUST
13 ASSUME THAT THE PATENT HOLDER AND THE INFRINGER WOULD HAVE
14 ACTED REASONABLY AND WOULD HAVE ENTERED INTO A LICENSE
15 AGREEMENT. YOU MUST ALSO ASSUME THAT BOTH PARTIES BELIEVED
16 THE PATENT WAS VALID AND INFRINGED. YOUR ROLE IS TO DETERMINE
17 WHAT THE RESULT OF THAT NEGOTIATION WOULD HAVE BEEN. THE TEST
18 FOR DAMAGES IS WHAT ROYALTY WOULD HAVE RESULTED FROM THE
19 HYPOTHETICAL NEGOTIATION AND NOT SIMPLY WHAT EITHER PARTY
20 WOULD HAVE PREFERRED.

21 A ROYALTY CAN BE CALCULATED IN SEVERAL DIFFERENT WAYS AND
22 IT IS FOR YOU TO DETERMINE WHICH WAY IS THE MOST APPROPRIATE
23 BASED ON THE EVIDENCE THAT YOU'VE HEARD. ONE WAY TO CALCULATE
24 A ROYALTY IS TO DETERMINE WHAT IS CALLED AN "ONGOING ROYALTY."
25 TO CALCULATE AN ONGOING ROYALTY, YOU MUST FIRST DETERMINE THE

1 "BASE," THAT IS, THE USE ON WHICH ADOBE IS TO PAY. YOU THEN
2 NEED TO MULTIPLY THE REVENUE ADOBE OBTAINED FROM THAT BASE BY
3 THE "RATE" OR PERCENTAGE THAT YOU FIND WOULD HAVE RESULTED
4 FROM THE HYPOTHETICAL NEGOTIATION.

5 ALTHOUGH THERE IS NO RIGID REQUIREMENT THAT DAMAGES IN ALL
6 CIRCUMSTANCES BE LIMITED TO SPECIFIC INSTANCES OF INFRINGEMENT
7 PROVEN WITH DIRECT EVIDENCE, THE DAMAGES AWARD MUST BE
8 CORRELATED TO THE EXTENT THE INFRINGING METHOD IS USED BY
9 CONSUMERS, BECAUSE THAT IS WHAT THE PARTIES TO THE
10 HYPOTHETICAL NEGOTIATION WOULD HAVE CONSIDERED. IF PARTICULAR
11 PRODUCTS SOLD BY ADOBE ARE NEVER ENABLED TO BE USED IN AN
12 INFRINGEMENT MANNER, THERE IS NO INFRINGEMENT AND SUCH UNITS OF
13 PRODUCT SHOULD NOT BE INCLUDED IN THE ROYALTY BASE.

14 IF THE PATENT COVERS ONLY PART OF THE PRODUCT THAT THE
15 INFRINGEMENT SSELLS, THEN THE BASE WOULD NORMALLY BE ONLY THAT
16 FEATURE OR COMPONENT. FOR EXAMPLE, IF YOU FIND THAT FOR A
17 THOUSAND DOLLAR CAR THE PATENTED FEATURE IS THE TIRES, WHICH
18 SELL FOR \$50, THE BASE REVENUE WOULD \$50. HOWEVER, IN A
19 CIRCUMSTANCE IN WHICH THE PATENTED FEATURE IS THE REASON THE
20 CUSTOMERS BUY THE WHOLE PRODUCT, THE BASE REVENUE COULD BE THE
21 VALUE OF THE WHOLE PRODUCT. EVEN IF THE PATENTED FEATURE IS
22 NOT THE REASON FOR CUSTOMER DEMAND, THE VALUE OF THE WHOLE
23 PRODUCT COULD BE USED IF, FOR EXAMPLE, THE VALUE OF THE
24 PATENTED FEATURE COULD NOT BE SEPARATED OUT FROM THE VALUE OF
25 THE WHOLE PRODUCT. IN SUCH A CASE, HOWEVER, THE RATE

1 RESULTING FROM THE HYPOTHETICAL NEGOTIATION WOULD BE A LOWER
2 RATE BECAUSE IT IS BEING APPLIED TO THE VALUE OF THE WHOLE
3 PRODUCT AND THE PATENTED FEATURE IS NOT THE REASON FOR THE
4 CUSTOMER'S PURCHASE OF THE WHOLE PRODUCT.

5 ANOTHER WAY TO CALCULATE A ROYALTY IS TO DETERMINE A
6 ONE-TIME LUMP SUM PAYMENT THAT THE INFRINGER WOULD HAVE PAID
7 AT THE TIME OF THE HYPOTHETICAL NEGOTIATION FOR A LICENSE
8 COVERING ALL USES. THIS DIFFERS FROM THE PAYMENT OF AN
9 ONGOING ROYALTY, BECAUSE WITH AN ONGOING ROYALTY THE LICENSEE
10 PAYS BASED ON THE REVENUE OF ACTUAL LICENSED USE. WHEN A
11 ONE-TIME LUMP SUM IS PAID, THE INFRINGER PAYS A SINGLE PRICE
12 FOR A LICENSE COVERING BOTH PAST AND FUTURE INFRINGING USE.

13 IN DETERMINING A REASONABLE ROYALTY, YOU MAY CONSIDER, BUT
14 ARE NOT LIMITED TO, THE FOLLOWING FACTORS:

15 ONE, THE ROYALTIES RECEIVED BY DIGITAL REG FOR THE
16 LICENSING OF THE PATENT-IN-SUIT, PROVING OR TENDING TO PROVE
17 AN ESTABLISHED ROYALTY;

18 TWO, THE RATES PAID BY ADOBE FOR THE USE OF OTHER PATENTS
19 COMPARABLE TO THE PATENTS-IN-SUIT;

20 THREE, THE NATURE AND SCOPE OF THE LICENSE, AS EXCLUSIVE
21 OR NONEXCLUSIVE, OR AS RESTRICTED OR NONRESTRICTED IN TERMS OF
22 TERRITORY OR WITH RESPECT TO WHOM THE MANUFACTURED PRODUCT MAY
23 BE SOLD;

24 FOUR, DIGITAL REG'S ESTABLISHED POLICY AND MARKETING
25 PROGRAM TO MAINTAIN ITS PATENT MONOPOLY BY NOT LICENSING

1 OTHERS TO USE THE INVENTION OR BY GRANTING LICENSES UNDER
2 SPECIAL CONDITIONS DESIGNED TO PRESERVE THAT MONOPOLY;

3 FIVE, THE COMMERCIAL RELATIONSHIP BETWEEN DIGITAL REG AND
4 ADOBE, SUCH AS WHETHER THEY ARE COMPETITORS IN THE SAME
5 TERRITORY IN THE SAME LINE OF BUSINESS, OR WHETHER THEY ARE
6 INVENTOR AND PROMOTER;

7 SIX, THE EFFECT OF SELLING THE PATENTED SPECIALTY IN
8 PROMOTING SALES OF OTHER PRODUCTS OF ADOBE, THE EXISTING VALUE
9 OF THE INVENTION TO DIGITAL REG AS A GENERATOR OF SALE --
10 SALES OF ITS NONPATENTED ITEMS, AND THE EXTENT OF WHICH -- THE
11 EXTENT OF SUCH DERIVATIVE OR CONVOYED SALES;

12 SEVEN, THE DURATION OF THE PATENT AND THE TERM OF THE
13 LICENSE;

14 EIGHT, THE ESTABLISHED PROFITABILITY OF THE PRODUCT MADE
15 UNDER THE PATENTS, ITS COMMERCIAL SUCCESS, AND ITS CURRENT
16 POPULARITY;

17 NINE, THE UTILITY AND ADVANTAGES OF THE PATENTED PROPERTY
18 OVER THE OLD MODES OR DEVICES, IF ANY, THAT HAD BEEN USED FOR
19 WORKING OUT SIMILAR RESULTS;

20 TEN, THE NATURE OF THE PATENTED INVENTION, THE CHARACTER
21 OF THE COMMERCIAL EMBODIMENT OF IT AS OWNED AND PRODUCED BY
22 DIGITAL REG, AND THE BENEFITS TO THOSE WHO HAVE USED THE
23 INVENTION;

24 ELEVEN, THE EXTENT TO WHICH ADOBE HAS MADE USE OF THE
25 INVENTION, OR ANY EVIDENCE PROBATIVE OF THE VALUE OF THAT USE;

1 TWELVE, THE PORTION OF THE PROFIT OR OF THE SELLING PRICE
2 THAT MAY BE CUSTOMARY IN THE PARTICULAR BUSINESS OR IN
3 COMPARABLE BUSINESSES TO ALLOW FOR THE USE OF THE INVENTION OR
4 ANALOGOUS INVENTIONS;

5 THIRTEEN, THE PORTION OF THE REALIZABLE PROFITS THAT
6 SHOULD BE CREDITED TO THE INVENTION AS DISTINGUISHED FROM
7 NONPATENTED ELEMENTS, THE MANUFACTURING PROCESS, BUSINESS
8 RISKS, OR SIGNIFICANT FEATURES OR IMPROVEMENTS ADDED BY THE
9 INFRINGEMENT;

10 FOURTEEN, THE OPINION AND TESTIMONY OF QUALIFIED EXPERTS;

11 FIFTEEN, THE AMOUNT THAT DIGITAL REG AND ADOBE WOULD HAVE
12 AGREED UPON AT THE TIME THE INFRINGEMENT BEGAN IF BOTH HAD
13 BEEN REASONABLY AND VOLUNTARILY TRYING TO REACH AN AGREEMENT;
14 THAT IS, THE AMOUNT WHICH A PRUDENT LICENSEE -- WHO DESIRED,
15 AS A BUSINESS PROPOSITION, TO OBTAIN A LICENSE TO MANUFACTURE
16 AND SELL A PARTICULAR ARTICLE EMBODYING THE PATENTED
17 INVENTION -- WOULD HAVE BEEN WILLING TO PAY AS A ROYALTY AND
18 YET BE ABLE TO MAKE A REASONABLE PROFIT AND WHICH AMOUNT WOULD
19 HAVE BEEN ACCEPTABLE BY A PRUDENT PATENTEE WHO WAS WILLING TO
20 GRANT A LICENSE.

21 YOU CAN CONSIDER EVENTS AND CIRCUMSTANCES THAT OCCURRED
22 BEFORE AND AFTER THE TIME OF THE HYPOTHETICAL NEGOTIATION
23 BETWEEN DIGITAL REG AND ADOBE TO DETERMINE A REASONABLE
24 ROYALTY. IT IS UP TO YOU, BASED ON THE EVIDENCE, TO DECIDE
25 WHAT TYPE OF ROYALTY IS APPROPRIATE IN THIS CASE.

1 IF YOU FIND THAT ADOBE INDUCED INFRINGEMENT, RATHER THAN
2 DIRECTLY INFRINGED, THEN YOU MUST MAKE A NUMBER OF ADDITIONAL
3 FINDINGS BEFORE DAMAGES MAY BE AWARDED.

4 IN ORDER TO RECOVER DAMAGES FOR INDUCED INFRINGEMENT,
5 DIGITAL REG MUST EITHER PROVE THAT THE METHODS PRACTICED BY
6 ADOBE'S ACCUSED PRODUCTS NECESSARILY INFRINGE AT LEAST ONE OF
7 DIGITAL REG'S PATENTS, OR PROVE ACTS OF DIRECT INFRINGEMENT BY
8 OTHERS THAT WERE INDUCED BY ADOBE. BECAUSE THE AMOUNT OF
9 DAMAGES FOR INDUCED INFRINGEMENT IS LIMITED BY THE NUMBER OF
10 INSTANCES OF DIRECT INFRINGEMENT, DIGITAL REG MUST FURTHER
11 PROVE THE NUMBER OF DIRECT ACTS OF INFRINGEMENT OF AT LEAST
12 ONE OF DIGITAL REG'S PATENTS, FOR EXAMPLE, BY SHOWING
13 INDIVIDUAL ACTS OF DIRECT INFRINGEMENT OR BY SHOWING THAT A
14 PARTICULAR CLASS OF USES DIRECTLY INFRINGES.

15 I WILL GIVE YOU A FEW MORE INSTRUCTIONS ABOUT HOW TO
16 CONDUCT YOUR DELIBERATIONS AFTER WE HAVE HEARD THE CLOSING
17 ARGUMENT. BUT WHAT I WILL DO BEFORE THE ARGUMENT IS TO READ
18 TO YOU THE VERDICT FORM THAT YOU WILL BE GIVEN TO TELL YOU
19 WHAT QUESTIONS YOU WILL BE ASKED TO ANSWER, SO YOU WILL BE
20 ABLE TO FOLLOW ALONG DURING THE CLOSING ARGUMENT.

21 WE, THE JURY, IN THE ABOVE-ENTITLED ACTION RETURN THE
22 FOLLOWING VERDICT ON THE QUESTIONS SUBMITTED TO US.

23 FIRST, INFRINGEMENT.

24 QUESTION ONE: DIRECT INFRINGEMENT. HAS DIGITAL REG
25 PROVEN IT IS MORE LIKELY THAN NOT THAT ADOBE HAS INFRINGED ANY

1 OF THE FOLLOWING CLAIMS? ENTER "YES" OR "NO" IN EACH BOX.

2 THEN, YOU WILL SEE A CHART WHICH WILL HAVE THE DECISIONS
 3 YOU HAVE TO MAKE. FIRST WILL BE THE ADOBE ACTIVATION PRODUCT
 4 AND WHETHER IT IS DIRECTLY INFRINGED BY CLAIM 45, THE
 5 INDEPENDENT CLAIM OF THE '670 PATENT.

6 NEXT, UNDER INFRINGEMENT, DIRECT INFRINGEMENT, YOU WILL BE
 7 ASKED ABOUT THE ADOBE LIVECYCLE PRODUCT. AND YOU WILL BE
 8 ASKED WHETHER OF THE '670 PATENT, CLAIM 5 -- I AM SORRY --
 9 CLAIM 45, THE INDEPENDENT CLAIM IS INFRINGED, WHETHER
 10 CLAIM 52, DEPENDENT ON CLAIM 45, IS DIRECTLY INFRINGED.

11 NEXT, YOU WILL BE ASKED ABOUT INDIRECT INFRINGEMENT. HAS
 12 DIGITAL REG PROVEN IT IS MORE LIKELY THAN NOT THAT ADOBE
 13 INDIRECTLY INFRINGED ANY OF THE FOLLOWING CLAIMS?

14 ENTER "YES" OR "NO" IN EACH BOX. AND THERE YOU WILL BE
 15 ASKED, AGAIN, ABOUT ADOBE ACTIVATION PRODUCT, BUT YOU WILL BE
 16 ASKED ABOUT THE '541 PATENT, CLAIM 1, THE INDEPENDENT CLAIM,
 17 CLAIM 2, DEPENDENT ON CLAIM 1, CLAIM 4, ALSO DEPENDENT ON
 18 CLAIM 1, AND CLAIM 13, ALSO DEPENDENT ON CLAIM 1.

19 THEN, YOU WILL BE ASKED AGAIN ABOUT THE '670 PATENT,
 20 CLAIM 45, THE INDEPENDENT CLAIM.

21 THEN, YOU WILL BE ASKED ABOUT ADOBE FLASH. AND YOU WILL
 22 BE ASKED ABOUT THE '541 PATENT, CLAIM 1, THE INDEPENDENT
 23 CLAIM, CLAIM 2, DEPENDENT ON CLAIM 1, CLAIM 4, ALSO DEPENDENT
 24 ON CLAIM 1, CLAIM 13, ALSO DEPENDENT ON CLAIM 1.

25 THEN, YOU WILL BE ASKED ABOUT THE ADOBE LIVECYCLE PRODUCT.

1 AND YOU WILL BE ASKED TO ANSWER "YES" OR "NO" ABOUT THE '541
2 PATENT, CLAIM 1, THE INDEPENDENT CLAIM, CLAIMS 2, 4, AND 13,
3 THE DEPENDENT CLAIMS, DEPENDENT ON CLAIM 1, CLAIMS 45, THE
4 INDEPENDENT CLAIM OF THE '670 PATENT, AND CLAIM 52, THE
5 DEPENDENT CLAIM OF CLAIM 45 OF THE '670 PATENT DEPENDENT ON
6 CLAIM 45.

7 NEXT, YOU WILL BE ASKED ABOUT INVALIDITY. UNDER
8 INVALIDITY YOU WILL BE FIRST ASKED ABOUT ANTICIPATION. HAS
9 ADOBE PROVEN THAT IT IS HIGHLY PROBABLE THAT THE FOLLOWING
10 CLAIMS OF DIGITAL REG'S PATENTS WERE ANTICIPATED? OR, IN
11 OTHER WORDS, NOT NEW.

12 ANSWER "YES" OR "NO" IN EACH BOX. SO THEN YOU WILL BE
13 ASKED ABOUT ANTICIPATED, AND YOU WILL BE ASKED ABOUT THE '670
14 PATENT, CLAIM 32, AN INDEPENDENT CLAIM, CLAIM 45, AN
15 INDEPENDENT CLAIM, AND CLAIM 52, DEPENDENT ON CLAIM 45.

16 NEXT, YOU WILL BE ASKED QUESTIONS ABOUT OBVIOUSNESS. HAS
17 ADOBE PROVEN THAT IT IS HIGHLY PROBABLE THAT THE FOLLOWING
18 CLAIMS OF DIGITAL REG'S PATENTS WOULD HAVE BEEN OBVIOUS TO A
19 PERSON OF ORDINARY SKILL IN THE FIELD AT THE TIME THE PATENT
20 APPLICATION WAS FILED? ANSWER "YES" OR "NO" IN EACH BOX.

21 OBVIOUS, FIRST THE '541 PATENT. CLAIM 1, THE INDEPENDENT
22 CLAIM, CLAIM 2, 4 AND 13, CLAIMS THAT ARE DEPENDENT ON
23 CLAIM 1, AND THE '670 PATENT, CLAIM 32, AN INDEPENDENT CLAIM,
24 CLAIM 45, AN INDEPENDENT CLAIM, AND CLAIM 52, A CLAIM THAT'S
25 DEPENDENT ON CLAIM 45.

1 THEN, YOU WILL BE TOLD IF YOU FOUND THAT AT LEAST ONE
 2 PRODUCT INFRINGES AT LEAST ONE VALID PATENT CLAIM, THAT IS,
 3 THAT YOU ANSWERED "YES" AS TO INFRINGEMENT OF A PARTICULAR
 4 CLAIM BY A PRODUCT IN EITHER QUESTION ONE OR TWO, AND YOU
 5 ANSWERED "NO" AS TO EACH OF THE INVALIDITY DEFENDANTS
 6 REGARDING THAT CLAIM IN QUESTIONS THREE, FOUR AND FIVE, THEN
 7 YOU WILL PROCEED TO ANSWER QUESTIONS SIX AND SEVEN.

8 IF YOU HAVEN'T FOUND THAT ANY PARTICULAR CLAIM IS BOTH
 9 NONVALID AND INFRINGED, THEN YOU WON'T ANSWER THESE DAMAGES
 10 QUESTIONS. BUT IF YOU DO FIND THAT, THEN YOU WILL ANSWER
 11 THESE QUESTIONS, AND THAT IS DAMAGES.

12 REASONABLE ROYALTY. FOR THE CLAIMS THAT YOU FOUND VALID
 13 AND INFRINGED BY ADOBE'S ACCUSED PRODUCTS, WHAT ROYALTY AMOUNT
 14 HAS DIGITAL REG PROVEN THAT IT SHOULD HAVE RECEIVED FROM
 15 ADOBE? AND THEN, YOU WILL ANSWER EITHER A, EITHER AN ONGOING
 16 ROYALTY PAYMENT OF ROYALTY RATE BLANK PERCENT. AND THERE YOU
 17 WILL ENTER AN APPROPRIATE ROYALTY RATE, IF YOU FIND ONE, TIMES
 18 ROYALTY BASE: DOLLAR SIGNAL, BLANK.

19 AND THAT WILL BE THE AMOUNT OF THE ROYALTY BASE UPON WHICH
 20 YOU DECIDE THE ROYALTY SHOULD BE BASED. AND THEN, YOU WILL
 21 MULTIPLY THE RATE, THE PERCENTAGE, TIMES THE BASE, THE NUMBER,
 22 AND REACH A DAMAGES AWARD: DOLLAR SIGN, BLANK.

23 THAT'S THE ONGOING ROYALTY. OR INSTEAD, YOU MAY ANSWER B,
 24 A ONE-TIME PAYMENT OF: DOLLAR SIGN, BLANK. AND THERE YOU
 25 WOULD ENTER INSTEAD A LUMP SUM AMOUNT, IF YOU FIND THAT THAT

1 IS APPROPRIATE.

2 NEXT, IF YOU GET TO THIS POINT YOU WILL ANSWER THE
3 WILLFULNESS QUESTION, WHICH WILL ASK YOU: HAS DIGITAL REG
4 PROVEN THAT IT IS HIGHLY PROBABLE THAT ADOBE ACTUALLY KNEW OR
5 THE EVIDENCE WAS SO OBVIOUS THAT ADOBE SHOULD HAVE KNOWN THAT
6 ITS ACTIONS CONSTITUTED INFRINGEMENT OF A VALID AND
7 ENFORCEABLE PATENT?

8 YOU WILL ANSWER THAT "YES" OR "NO." AND THEN, YOU WILL
9 RETURN YOUR VERDICT.

10 SO AT THIS TIME WE WILL HEAR, FIRST, CLOSING ARGUMENT FROM
11 PLAINTIFF. THEN, WE WILL HEAR CLOSING ARGUMENT FROM
12 DEFENDANT, WHICH WILL BE SHARED BETWEEN TWO OF THE ATTORNEYS.
13 AND THEN, WE GO BACK TO THE PLAINTIFF FOR A REBUTTAL, SHORT
14 FINAL CLOSING ARGUMENT.

15 WE WILL TAKE A BREAK IN-BETWEEN THE PLAINTIFF'S OPEN AND
16 CLOSE AND THE DEFENDANTS' CLOSE. SO YOU MAY ARGUE. AND YOU
17 MAY TURN THAT PODIUM, IF YOU WOULD LIKE.

18 **THE CLERK:** WILL YOU ALSO BE USING THE MONITORS?

19 **MR. ELLWANGER:** YES.

20 **CLOSING ARGUMENT**

21 **MR. ELLWANGER:** ADOBE PROTECTS ITS OWN PROPERTY WITH
22 STOLEN PROPERTY.

23 **THE COURT:** NOT LOUD ENOUGH, I'M AFRAID. OR IF YOU
24 ARE USING THE MIC, IT IS NOT CLOSE ENOUGH, NOT LOUD ENOUGH OR
25 NOT ON.

1 **MR. ELLWANGER:** IS THIS BETTER?

2 **THE COURT:** YES.

3 **MR. ELLWANGER:** ADOBE PROTECTS ITS OWN PROPERTY WITH
4 STOLEN PROPERTY. THOSE WERE THE FIRST WORDS YOU HEARD ABOUT
5 THIS CASE A WEEK-AND-A-HALF AGO. AND AT THE TIME YOU MIGHT
6 HAVE THOUGHT THAT I WAS TALKING ABOUT SOME MISCREANT, TO
7 BORROW DR. DEVANBU'S PHRASE. A MISCREANT THAT HAD CRAWLED
8 THROUGH SOME WINDOW AND TOOK SOME SOFTWARE.

9 BUT I WASN'T TALKING ABOUT THAT, BECAUSE PATENT
10 INFRINGEMENT IS MORE COMPLICATED THAN THAT. IT'S ABOUT TAKING
11 IDEAS AND USING THOSE IDEAS AND NOT PAYING FOR THOSE IDEAS.
12 AND THAT'S WHAT THE EVIDENCE HAS SHOWN HAPPENED HERE.

13 NOW, I'M NOT GOING TO TAKE YOUR TIME GOING THROUGH THE
14 TESTIMONY OF EVERY SINGLE WITNESS AND EVERY SINGLE DOCUMENT
15 THAT HAS BEEN ADMITTED INTO THIS CASE. BUT I DO WANT TO TAKE
16 THE TIME TO TALK TO YOU ABOUT SOME EVIDENCE THAT'S IN THE
17 RECORD, BUT THAT YOU HAVEN'T HAD A CHANCE TO LOOK AT YET AND
18 CONSIDER.

19 AND I ALSO WANT TO TAKE THE OPPORTUNITY TO CONNECT THE
20 DOTS BETWEEN SOME OF THE EVIDENCE THAT YOU HAVE SEEN AND THE
21 JURY VERDICT THAT THE COURT JUST INSTRUCTED YOU ABOUT, AND
22 THAT WHEN YOU GO BACK IN THAT ROOM THAT YOU WILL HAVE TO FILL
23 OUT.

24 AND THE FIRST THING THAT I WANT TO TALK ABOUT IS
25 WILLFULNESS. IN ORDER TO PROVE WILLFULNESS, THE COURT'S

1 INSTRUCTED THAT TO PROVE WILLFUL INFRINGEMENT DIGITAL REG MUST
2 PERSUADE YOU THAT IT IS HIGHLY PROBABLE THAT ADOBE ACTED WITH
3 RECKLESS DISREGARD OF THE PATENT IT INFRINGED.

4 TO DEMONSTRATE SUCH RECKLESS DISREGARD DIGITAL REG MUST
5 PERSUADE YOU THAT ADOBE ACTUALLY KNEW, OR IT WAS SO OBVIOUS
6 THAT ADOBE SHOULD HAVE KNOWN THAT ITS ACTIONS CONSTITUTED
7 INFRINGEMENT OF A VALID PATENT.

8 AND I WANT TO WALK YOU THROUGH SOME OF ADOBE'S PATENTS
9 THAT THEY HAVE AND THE PROSECUTION HISTORIES, WHICH ARE THE
10 FILES THAT GO BACK AND FORTH BETWEEN THE APPLICANT AND THE
11 UNITED STATES PATENT OFFICE.

12 NOW, I'M NOT SAYING ADOBE DIDN'T DESERVE THESE PATENTS OR
13 THEY WEREN'T ULTIMATELY GRANTED; THAT THEY FIGURED OUT HOW TO
14 PUT THE ERASER AT THE END OF THE PENCIL. BUT I DO WANT TO
15 TALK ABOUT THE NOTICE THAT THEY SHOW ADOBE WAS UNDER OF THE
16 '541 AND THE '670 PATENT.

17 NOW, IN ORDER TO DO THAT, I WANT TO BRING UP THE FIRST
18 SLIDE.

19 THANK YOU, MS. MASON.

20 AT FIRST, I WANT TO TALK TO YOU ABOUT UNITED STATES PATENT
21 '384. IT IS PLAINTIFF'S EXHIBIT 6. AND THIS PATENT, AS
22 YOU'LL SEE, IS ASSIGNED TO ADOBE. AND ON THE VERY FACE OF
23 THIS PATENT YOU'LL SEE THE PATTERSON PATENT '541 THAT'S
24 INDICATED AS ONE OF THE PATENTS THAT THE PATENT OFFICE POINTED
25 OUT TO ADOBE AS BEING RELEVANT TO THIS ADOBE PATENT.

1 AND YOU CAN TELL THAT BECAUSE OF THAT ASTERISK RIGHT THERE
2 NEXT TO THE PATENT NUMBER. IT SAYS: "CITED BY EXAMINER."

3 NOW, AS WE GO THROUGH THIS PROSECUTION HISTORY YOU WILL
4 SEE THAT THIS '541 PATENT WASN'T JUST MENTIONED, THAT, IN
5 FACT, A NUMBER OF THE CLAIMS STOOD REJECTED AS UNPATENTABLE IN
6 VIEW OF U.S. PATENT '541 TO PATTERSON.

7 AND SO TO OVERCOME THAT, ADOBE HAD TO WRITE PAPERS TO THE
8 PATENT OFFICE, AND APPEAL IT, AND FIGHT ABOUT WHETHER OR NOT
9 THE PATTERSON PATENT WAS A REASON TO REJECT THEIR PATENT.

10 ISSUES: WAS IT PROPERLY REJECTED UNDER PATTERSON?

11 PROPERLY REJECTED UNDER PATTERSON.

12 PROPERLY REJECTED UNDER PATTERSON.

13 HERE YOU WILL SEE ARGUMENT ABOUT:

14 "CLAIM 1 STANDS FINALLY REJECTED AS BEING UNPATENTABLE
15 OVER PATTERSON."

16 YOU WILL SEE IN THE ARGUMENT REFERENCE AFTER REFERENCE
17 AFTER REFERENCE AFTER REFERENCE AFTER REFERENCE TO THE
18 PATTERSON PATENT.

19 AND HOW ADOBE'S LAWYERS HAD TO CONTINUE TO ARGUE ABOUT THE
20 PATTERSON PATENT. FINALLY, IN RESPONSE TO ARGUMENT, YOU WILL
21 SEE THAT THE PATENT OFFICE SAID THAT THE REFERENCE OF
22 PATTERSON WAS ADDED IN FURTHER REVIEW OF THE PREVIOUSLY-CITED
23 REFERENCES FOR NEW GROUNDS OF REJECTION.

24 AND IN A SHEET YOU WILL SEE IN A NUMBER OF THESE
25 PROSECUTION HISTORIES, NOTICE OF REFERENCES CITED, YOU WILL

1 SEE THERE THAT THE EXAMINER OF THE UNITED STATES PATENT
2 OFFICE, MR. TRAN, CITED THE PATTERSON PATENT BY NUMBER TO
3 ADOBE.

4 AND INSIDE OF THAT SAME PATENT BY NAME:

5 "REGULATING ACCESS TO DIGITAL CONTENT."

6 SO NEXT WE MOVE TO THE '143 PATENT. THAT, AGAIN, IS
7 ANOTHER PATENT FILED BY ADOBE. AND THIS TIME ON THE VERY FACE
8 OF THIS PATENT YOU WILL SEE THAT THE '541 PATTERSON PATENT IS
9 LISTED AGAIN. EXCEPT THIS TIME THERE IS NO ASTERISK, BECAUSE
10 THIS TIME THE FILE HISTORY WILL SHOW YOU THAT IN INFORMATION
11 DISCLOSURE STATEMENT BY APPLICANT, ADOBE, THEY LISTED THE '541
12 PATTERSON PATENT. SOMEONE OVER THERE WAS PAYING ATTENTION.

13 NEXT, WE MOVE TO THE '642 PATENT. NOW, THIS ONE YOU'VE
14 SEEN BEFORE BECAUSE MR. HERBACH CAME OVER HERE FROM ADOBE,
15 TESTIFIED TO YOU, AND HE ACTUALLY WALKED THROUGH THIS PATENT.
16 THIS WAS HIS. AND ON THE FACE OF THIS PATENT YOU'LL SEE THAT
17 THE '670 PATTERSON PATENT, THE TRACKING PATENT, WELL, THAT IS
18 ALSO POINTED OUT.

19 AND, LOOK. THERE IS THAT ASTERISK AGAIN. AND IF YOU GO
20 INTO THE PROSECUTION HISTORY, YOU WILL SEE THAT, AGAIN, NOTICE
21 OF REFERENCES CITED. THE PATENT EXAMINER POINTED OUT TO ADOBE
22 THE '670 TRACKING PATENT BY PATRICK PATTERSON.

23 SO WHEN MR. HERBACH FILED WHAT WOULD EVENTUALLY BECOME THE
24 '102 PATENT -- AGAIN, GRANTED TO ADOBE -- THIS TIME ON THE
25 FACE OF THE PATENT THERE IS THE '670, THE TRACKING PATENT.

1 BUT THIS TIME NO ASTERISK. BECAUSE IF YOU LOOK AT THE FILE
2 HISTORY MR. HERBACH AND ADOBE CITED THAT PATENT THEMSELVES.

3 AS YOU'VE SEEN THERE IS A SIGNIFICANT AMOUNT OF
4 UNCONTROVERTED EVIDENCE IN THE DOCUMENTS HELD ONTO BY THE
5 PATENT OFFICE ABOUT WHAT ADOBE KNEW AND WHEN THEY KNEW IT.
6 AND IN ADDITION TO THESE DOCUMENTS, YOU ALSO WERE SHOWN THE
7 ADOBE VALUE PROPOSITION, WHICH MR. VENTERS TESTIFIED HE WENT
8 THROUGH WITH MEMBERS OF ADOBE VENTURES ON THE PHONE DURING THE
9 SUMMER OF 2004.

10 AND HE WENT OVER IN GREAT DETAIL ABOUT WHAT VALUE THESE
11 DIGITAL REG PATENTS COULD GIVE TO ADOBE FOR THEM TO USE IN
12 THEIR PRODUCTS. HE SAID IT WOULD GIVE USERS OF ADOBE PRODUCTS
13 A WAY TO SECURELY TRACK, AUTHENTICATE AND MONETIZE DOCUMENTS,
14 GRAPHICS AND OTHER MEDIA.

15 HE WENT THROUGH WITH ADOBE HOW, IF THEY USE THESE DIGITAL
16 REG PATENTS IN THEIR ADOBE STANDALONE PRODUCTS, IT WOULD
17 COMPLETE THE ECOSYSTEMS FOR ALL THESE DIFFERENT TYPES OF ADOBE
18 PRODUCTS.

19 AND, FINALLY, IT EVEN DISCUSSED THE TRACKING PATENT BY
20 NAME:

21 "WITH THE GRANTING OF 'TRACKING ELECTRONIC CONTENT' BY THE
22 U.S. PATENT OFFICE, DIGITAL CONTAINERS HAS OBTAINED THE
23 'SUPERDISTRIBUTION' PATENT.

24 AND IN THE NEXT PARAGRAPH YOU WILL SEE THEY REFER TO THE
25 '541 PATENT BY THE NUMBER AND THE NAME:

1 "REGULATING ACCESS TO DIGITAL CONTENT."

2 CONSIDER THIS EVIDENCE WHEN YOU CONSIDER WHAT ADOBE KNEW
3 AND WHEN THEY KNEW IT.

4 NOW, IN ADOBE'S OPENING STATEMENT THEY PUT UP THIS
5 DEMONSTRATIVE OF A TIME LINE SHOWING WHEN LIVECYCLE WAS
6 DEVELOPED, WHEN FLASH ACCESS WAS RELEASED. BUT IN FIGURING
7 OUT WHAT THEY KNEW AND WHEN THEY KNEW IT, THEY DIDN'T PUT WHEN
8 THE PATENTS WERE FILED THAT ARE AT ISSUE IN THIS CASE OR EVEN
9 WHEN THOSE PATENTS ISSUED. IN FACT, THEY DIDN'T EVEN LEAVE
10 ROOM ON THE TIME LINE.

11 SO WE HAVE EXTENDED IT BACK TO SHOW YOU IN CONTEXT WHEN
12 THE APPLICATION FOR THE '541 WAS FILED, WHEN THE APPLICATION
13 FOR THE '670 PATENT WAS FILED, WHEN THE APPLICATION FOR THE
14 '541 PATENT WAS GRANTED, AND WHEN THE APPLICATION FOR THE '670
15 PATENT WAS GRANTED.

16 WHEN YOU ARE CONSIDERING WHAT ADOBE KNEW AND WHEN THEY
17 KNEW IT, AND IN LIGHT OF WHEN ALL OF THOSE PATENTS WERE FILED
18 THAT WE DISCUSSED, CONSIDER THAT TIME LINE.

19 AND CONSIDER ALSO THE TESTIMONY THAT YOU HEARD FROM
20 MR. HERBACH THAT WHEN HE WENT THROUGH THAT PATENT APPLICATION
21 PROCESS HIMSELF, YES, HE DID WORK WITH OUTSIDE COUNSEL. BUT
22 HE ALSO WORKED WITH IN-HOUSE COUNSEL.

23 THOSE ARE LAWYERS WHO ARE EMPLOYED BY ADOBE. THEY GO TO
24 WORK THERE EVERY DAY. THEY ARE NOT IN A SEPARATE LAW FIRM.
25 THEY ARE ADOBE EMPLOYEES.

1 AND MR. HERBACH TESTIFIED THAT HE WORKED WITH THEM DURING
2 THAT APPLICATION PROCESS.

3 NOW, ADOBE'S ALSO MADE AN ISSUE THROUGHOUT THIS CASE
4 REGARDING WHAT THEY KNEW AND WHEN THEY KNEW IT THAT WE DRAGGED
5 THEM INTO COURT HERE, AND WE'VE MADE THEM GO TO THE EXPENSE OF
6 HIRING THESE LAWYERS AND EXPERTS AND HAVING EXECUTIVES SIT
7 THROUGH WEEKS OF TRIAL.

8 BUT THEN, ON THE OTHER HAND, THEY SHOWED YOU AN OPENING
9 STATEMENT WITH THIS DEMONSTRATIVE, WHICH WENT THROUGH ALL OF
10 THOSE DATES THAT YOU JUST LOOKED AT. AND UNDER EACH ONE WROTE
11 "NO LAWSUIT, NO LAWSUIT, NO LAWSUIT, NO LAWSUIT, NO LAWSUIT."

12 IT IS AS IF ADOBE IS TELLING YOU THAT THE ONLY TIME THEY
13 PAY ATTENTION IS WHEN SOMEBODY SUES THEM.

14 MEMBERS OF THE JURY, WE WOULD SUBMIT TO YOU THAT THAT IS
15 RECKLESS. THAT'S WILLFUL.

16 THE JUDGE HAS INSTRUCTED YOU THAT EVEN IF YOU DON'T FIND
17 WILLFULNESS, EVEN IF THAT NEVER ENTERED INTO THIS COURTROOM,
18 THAT YOU COULD STILL FIND THAT ADOBE INFRINGED OUR PATENTS.

19 AND THERE'S TWO TYPES OF INFRINGEMENT THAT YOU ARE
20 INSTRUCTED ABOUT: DIRECT AND INDIRECT. NOW, TO DECIDE
21 WHETHER ADOBE DIRECTLY INFRINGES A CLAIM OF DIGITAL REG'S
22 PATENTS, YOU MUST COMPARE ACTIONS BY ADOBE WITH THE PATENT
23 CLAIMS, AND DETERMINE WHETHER EVERY REQUIREMENT OF THE CLAIM
24 WAS CARRIED OUT BY ADOBE.

25 IF SO, ADOBE DIRECTLY INFRINGES THAT CLAIM. AND THIS IS

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1 WHERE IT IS DIFFERENT FROM WILLFULNESS. WHETHER OR NOT ADOBE
2 KNEW ITS PRODUCTS INFRINGED, OR EVEN KNEW OF THE PATENT, DOES
3 NOT MATTER IN DETERMINING DIRECT INFRINGEMENT. IN THIS CASE
4 DIGITAL REG ARGUES THAT ADOBE INFRINGED ITS PATENTS BOTH
5 DIRECTLY AND INDIRECTLY.

6 AND INDIRECT INFRINGEMENT, JUST SO THAT WE UNDERSTAND THE
7 RULES WE ARE LIVING BY, IS THE ACT OF ENCOURAGING OR INDUCING
8 OTHERS TO INFRINGE A PATENT. THAT'S CALLED "INDUCING
9 INFRINGEMENT."

10 NOW, IN ORDER TO DETERMINE WHETHER OR NOT ADOBE HAS
11 INFRINGED, WHETHER DIRECTLY OR INDIRECTLY, DIGITAL REG'S
12 PATENTS, WE WANT YOU TO FOCUS ON THREE THINGS: THE DOCUMENTS,
13 THE CODE, AND THE CLAIMS. THOSE THREE THINGS WILL GIVE YOU
14 YOUR ANSWER.

15 AND I WANT TO SPEND JUST A BRIEF MOMENT TALKING AGAIN
16 ABOUT WHAT IS ACTUALLY AT ISSUE HERE. IT IS THESE SIX CLAIMS.
17 FOUR CLAIMS OF THE '541 PATENT. TWO CLAIMS OF THE '670
18 TRACKING PATENT. AND THERE'S THIS ONE INDEPENDENT CLAIM, THIS
19 METHOD OF REGULATING ACCESS TO DIGITAL CONTENT. AND IT
20 FOCUSES ON WHAT HAPPENS AT THE CLIENT COMPUTER, THE ONE YOU
21 HAVE ON YOUR DESK.

22 AT A CLIENT EXECUTING AN ACCESS CHECKING PROCESS TO
23 DETERMINE WHETHER THE CLIENT HOLDS A PRE-EXISTING
24 PERMISSION -- OR PERSIMMON, AS DR. DEVANBU SAID -- FOR A
25 RESOURCE TO ACCESS THAT DIGITAL CONTENT. IF IT DOESN'T, NEXT

1 STEP: REQUEST PERMISSION FROM AN EXTERNAL SOURCE FOR THAT
2 RESOURCE.

3 RECEIVING FROM THAT EXTERNAL SOURCE A TOKEN. AND THE LAST

4 STEP: BASED ORDER THAT RECEIVED TOKEN, EXECUTING AN
5 INSTALLATION PROCESS THAT GENERATES AT THE CLIENT A PERMISSION
6 THAT IS LOCKED UNIQUELY TO THE CLIENT AND THAT MAY BE FOUND BY
7 A LATER EXECUTION OF THAT PROCESS.

8 SO THAT'S THE CLAIM THAT GOVERNS THE REST OF THE ONES IN
9 THE '541. SO FOR CLAIM 2, 4, AND 13, THE DEPENDENT CLAIMS,
10 THEY DEPEND ON CLAIM 1, AND THEY ADD A LITTLE BIT.

11 CLAIM 2 ADDS WHEN THEY REQUEST THE PERMISSION, YOU RECEIVE
12 A TOKEN AND SELECTIVELY GRANT THE RESOURCE ACCESS, ARE ALL
13 PERFORMED BY THE CLIENT.

14 CLAIM 4 TALKS ABOUT WHERE THE PERMISSION COMPRISSES A
15 UNIQUE CODED KEY, RESPONDING TO THE DIGITAL CONTENT.

16 AND THE LAST DEPENDENT CLAIM, 13, TALKS ABOUT REQUESTING
17 THE PERMISSION FROM THE EXTERNAL SOURCE, AND THAT INITIATES
18 THIS WHOLE AUTHORIZATION PROCEDURE YOU'VE HEARD ABOUT. AND
19 THAT THE TOKEN RECEIVED IS BASED ON THE RESULT OF THAT
20 PROCEDURE.

21 SO AS YOU LOOK AT THE DOCUMENTS AND THE COMPUTER CODE,
22 LOOK AT THE CLAIMS, AND SEE HOW THEY MATCH UP, BECAUSE THE
23 EVIDENCE IS THERE.

24 ON THE '670 PATENT, THIS TALKS ABOUT TRACKING. TRACKING
25 THE CONTENT. AND THERE'S A METHOD ABOUT CREATING A FILE. AND

CLOSING ARGUMENT - ELLWANGER

1 THAT FILE INCLUDES SOME ELECTRONIC CONTENT. AND THAT CONTENT,
2 IT CAUSES ACCESS TO THE ELECTRONIC CONTENT TO BE DENIED UNTIL
3 NOTIFICATION INFORMATION IS COLLECTED BY EXECUTABLE
4 INSTRUCTIONS AND HAS BEEN SUCCESSFULLY TRANSMITTED OUT.

5 YOU HAVE TO TRANSMIT THE FILE TO AT LEAST ONE ADDRESS, AND
6 THEN RECEIVE A NOTIFICATION INFORMATION FROM THE NEXT
7 RECIPIENT, OTHER THAN THAT OF THE SENDER OF WHAT THE CONTENT
8 IS.

9 AND THEN, THERE IS ONE DEPENDENT CLAIM HERE THAT WHEN YOU
10 CREATE THE FILE THAT INCLUDES ENCRYPTING THE DOCUMENT. AND
11 ONE WAY TO THINK ABOUT THE CLAIMS OF BOTH THE '541 AND THE
12 '670 IS TO REMEMBER BACK TO WHAT MR. PATTERSON AND I TALKED
13 ABOUT WHEN HE WAS ON THE STAND LAST WEEK.

14 BECAUSE MR. PATTERSON TOLD YOU THAT HIS WHOLE IDEA
15 CENTERED AROUND THAT DIGITAL ENVELOPE, RIGHT? HOW HE WANTED
16 TO CREATE THIS VESSEL THAT WOULD ALLOW HIM TO PUT
17 COPYRIGHTABLE MATERIALS INTO SOMETHING AND PROTECT IT ALL THE
18 WAY THROUGH THE PROCESS. SO WHEN YOU LOOKED AT IT ON
19 DIFFERENT MACHINES YOU OWN YOU WOULDN'T HAVE TO KEEP ENTERING
20 IN THE SAME CODES AND GO THROUGH THAT WHOLE PROCESS. SO YOU
21 COULD ACTUALLY USE MUSIC AND BOOKS AND FILMS, LIKE WE ALL DO
22 TODAY.

23 AND THAT IS WHAT HE TOLD YOU HE WANTED TO DO WAS REGULATE
24 THAT ACCESS TO DIGITAL CONTENT. BUT IT DIDN'T STOP THERE. HE
25 KNEW THAT TO MAKE MONEY ON IT IT WOULD BE IMPORTANT FOR YOU TO

1 BE ABLE TO TRACK THAT ELECTRONIC CONTENT. AND HE TOLD YOU
2 THAT STORY OF JULIAN LENNON, JOHN LENNON'S SON, WHO RELEASED
3 THAT SONG ON THEIR WEBSITE.

4 AND HE SAID THAT THAT FIRST MONTH IT CREATED A LOT OF
5 BUZZ. IT HAD A QUARTER MILLION DOWNLOADS. THEY HAD A QUARTER
6 MILLION DOWNLOADS THAT WERE REGULATING ACCESS TO THAT DIGITAL
7 CONTENT. BUT THAT THEY ALSO HAD HALF A MILLION PASSAROUNDS,
8 HE CALLED THEM. AND THE REASON THEY KNEW THEY HAD HALF A
9 MILLION PASSAROUNDS IS BECAUSE THEY COULD TRACK WHAT PEOPLE
10 DID WITH THE CONTENT.

11 WHAT HE DESCRIBED IS WHAT HE GOT. AFTER YEARS OF WORKING
12 THROUGH THE PATENT OFFICE, THE '541 AND THE '670 PATENT WERE
13 BOTH GRANTED.

14 SO NOW TO TALK ABOUT HOW ADOBE HAS INFRINGED THEM, FIRST,
15 LET'S TALK ABOUT THE SOURCE CODE.

16 NOW, DR. DEVANBU TESTIFIED TO YOU A LOT ABOUT THE SOURCE
17 CODE, ABOUT HOW HE SPENT 16 YEARS TEACHING THIS SAME SOURCE
18 CODE, THE SAME COMPUTER CODE THAT ADOBE USES IN ITS PRODUCTS
19 TO HIS STUDENTS AT UC DAVIS.

20 AND HE ALSO TOLD YOU THAT HE'S NEVER TESTIFIED BEFORE. HE
21 HAS NEVER DONE THIS BEFORE EXCEPT FOR THAT CAR WRECK CASE. HE
22 NEVER HAS COME INTO COURT AND TOLD THE JURY WHETHER OR NOT
23 THINGS INFRINGE. ALL HE DOES IS TEACH CODE. THAT'S HIS JOB.

24 AND HE TOLD YOU THAT SOURCE CODE IS WHAT'S USED BY
25 PROGRAMMERS TO WRITE THE SOFTWARE, TO UNDERSTAND IT AND TO

1 MAINTAIN IT. AND THAT SOURCE CODE IS THE MOST ACCURATE
2 REPRESENTATION OF WHAT ACTUALLY HAPPENS WHEN A SYSTEM RUNS.
3 AND THAT IS WHY DR. DEVANBU GOT UNDER THE HOOD, EXAMINED THE
4 CODE HIMSELF SO THAT HE DIDN'T HAVE TO ONLY RELY ON DOCUMENTS
5 OR ONLY RELY ON TESTIMONY. HE GOT UNDER THE HOOD AND LOOKED
6 AT THE CODE.

7 HE SAID:

8 "I LOOKED AT THE DOCUMENTS MADE AVAILABLE BY ADOBE AND THE
9 SOURCE CODE."

10 NOW, DR. WICKER TOLD YOU -- HE'S ADOBE'S EXPERT. HE TOLD
11 YOU HE CAN ALSO READ CODE. AND WHAT HE TOLD YOU ON THE STAND
12 IS THAT HE AGREED THAT WHEN DR. DEVANBU DESCRIBED A PIECE OF
13 CODE, HE AGREED WITH WHAT HE WAS SAYING, AFTER CONFIRMING IT,
14 OF COURSE, WITH ADOBE'S ENGINEERS AND HIS OWN INITIAL
15 REACTION.

16 SO DR. WICKER LOOKED AT WHAT DR. DEVANBU DID, HIS CODE
17 ANALYSIS. LOOKED AT IT BECAUSE HE COULD READ CODE, TOO, AND
18 CONFIRMED IT. AND THEN TALKED TO ADOBE'S ENGINEERS, WHO
19 OBVIOUSLY CAN READ CODE. THEY WRITED IT. AND THEY CONFERRED
20 IT. NO ONE DISPUTES THAT.

21 SAID:

22 "THAT'S RIGHT. WHEN I LOOKED AT THE SPECIFIC CODE THAT
23 DR. DEVANBU LOOKED AT, IT APPEARED TO ME THAT HE WAS
24 DESCRIBING IT CORRECTLY."

25 DR. WICKER SAID HE TALKED TO MR. HERBACH, WHO TESTIFIED TO

1 YOU TODAY -- OR TESTIFIED TO YOU DURING THIS TRIAL. AND
2 AGREED WITH MR. HERBACH THAT THE MOST ACCURATE REFLECTION OF
3 THE ACCUSED TECHNOLOGY IS THE SOURCE CODE.

4 AND DR. WICKER CONFIRMED ON THE STAND THAT HE DIDN'T
5 REVIEW THE SOURCE CODE HIMSELF OTHER THAN WHAT DR. DEVANBU PUT
6 IN HIS REPORT.

7 "THAT'S CORRECT."

8 HE CONFIRMED THAT HE HAD NO PROBLEM WITH IT, AND HE
9 CONFIRMED THAT THE SOURCE CODE DESCRIBES EXACTLY HOW THE
10 PRODUCT WORKS.

11 NOW, YOU ARE GOING TO HAVE TO FOCUS ON ALL OF THE ELEMENTS
12 OF THESE CLAIMS, BUT I DID WANT TO AT LEAST POINT OUT ONE
13 ARGUMENT THAT ADOBE MADE IN THEIR OPENING STATEMENT. I'M SURE
14 WE WILL HERE MORE ABOUT IT DURING THEIR CLOSING ARGUMENT.

15 AND THAT'S ABOUT THIS RECEIVING FROM THE EXTERNAL SOURCE A
16 TOKEN.

17 NOW, IN THE PARLANCE OF ADOBE YOU'VE HEARD A LOT ABOUT
18 LIVECYCLE'S VOUCHER, AND IN FLASH ABOUT THEIR LICENSED FILES.
19 THAT IS WHAT DIGITAL REG IS SAYING FULFILLS THAT TOKEN
20 REQUIREMENT.

21 AND DR. DEVANBU, IN TESTIFYING IN HIS REPORT ABOUT THE
22 TOKEN, LOOKED TO SEE: WELL, HOW DOES ADOBE DESCRIBE IT. WHAT
23 DID MR. HERBACH SAY? AND CONFIRMED THAT IN A VOUCHER, WHICH
24 IS WHAT ADOBE'S CALLED A TOKEN HERE, A DOCUMENT KEY WITHIN THE
25 VOUCHER, FOR EXAMPLE, IS USED TO SYMMETRICALLY DECRYPT THE

1 DOCUMENT.

2 AND THEN, HE WAS ASKED:

3 "WELL, WHAT ELSE CAN YOU USE IT FOR, JUST THAT?

4 "NO, THE VOUCHER THAT ADOBE USES CAN ALSO INSTRUCT THE
5 CLIENT APPLICATION, LIKE, FOR EXAMPLE, WHETHER OR NOT YOU HAVE
6 PERMISSION TO PRINT."

7 SO IT IS MORE THAN JUST THAT ONE PIECE OF INFORMATION.

8 BUT ADOBE TOLD YOU THAT YOU HAD TO HAVE THAT, WHAT THEY CALLED
9 THE YES/NO TOKEN FROM THE SERVER. AND THAT IF IT IS A "YES,"
10 THEN GENERATE AT THE CLIENT A PERMISSION LOCKED TO THE CLIENT.

11 TO HELP PROVE UP THAT POINT THEY SHOWED YOU THIS DOCUMENT
12 ABOUT HOW KEYS ARE GENERATED AT THE SERVER. AND THEY
13 HIGHLIGHTED WHAT YOU SEE BEFORE YOU.

14 BUT WHAT THEY DIDN'T HIGHLIGHT IS, I THINK, EQUIALLY
15 IMPORTANT. WHAT THEY DIDN'T HIGHLIGHT IS THAT IN RESPONSE TO
16 AN E-LICENSE DOWNLOAD REQUEST, IT THEN GOES ON TO SAY:

17 "THE LICENSE IS PROCESSED BY ALM AND IS STORED IN A
18 SECURED CONTAINER AT THE CLIENT MACHINE. AND THEN, AFTER THAT
19 IS DONE, NO ADDITIONAL NETWORK PACKAGES OR REQUESTS ARE
20 NEEDED."

21 AND THEY SORT OF LEFT IT AT THAT. THEY DIDN'T TALK ABOUT
22 HOW ONCE IT IS STORED AT THE CLIENT THE PROCESS STILL EXECUTES
23 TO CHECK AT THE CLIENT THE ACCESS CHECKING PROCESS. THAT
24 STILL HAPPENS.

25 ANOTHER DOCUMENT DR. DEVANBU TALKED ABOUT, STATES:

1 "ISSUING A LICENSE CONTAINING THE CONTENT ENCRYPTION KEY
2 TO DECRYPT THE CONTENT AND THE USAGE RULES ASSOCIATED WITH
3 IT."

4 AGAIN, MORE THAN JUST THE ONE THING IN THAT LICENSE.

5 AND IF ALLOWED BY THE LICENSE, THE CLIENT STORES THE
6 LICENSE TO ENABLE OFFLINE ACCESS. LICENSE CACHING ALLOWS THE
7 CONSUMER TO VIEW PROTECTED CONTENT WITHOUT REACQUIRING A
8 LICENSE EVERY TIME THEY WANT TO VIEW CONTENT.

9 THAT GOES BACK TO MR. PATTERSON'S IDEA OF BEING ABLE TO
10 ALWAYS ACCESS THE SECURE CONTENT AND KEEP IT SAFE FROM BEING
11 DISTRIBUTED TO PLACES YOU DIDN'T WANT IT TO GO, BUT STILL
12 BEING ABLE TO UTILIZE IT.

13 SO WHAT DID DR. DEVANBU DO? HE LOOKED AT THE CODE. AND
14 WHAT DOES THE CODE TELL YOU? THE CODE TELLS YOU THAT A CHECK
15 IS PERFORMED TO SEE WHETHER OR NOT YOU HAVE A LOCAL VOUCHER
16 STORED ON THE CLIENT. IS IT AVAILABLE? IF IT IS, THE CODE
17 SAYS YOU CAN PROCEED.

18 IF IT'S NOT, THE CODE SAYS YOU HAVE TO REQUEST ACCESS
19 ONLINE.

20 SO LOOK AT THOSE STEPS THERE THAT DR. DEVANBU OUTLINED IN
21 THE COMPUTER CODE AND COMPARE THEM TO WHAT HAPPENS IN CLAIM 1
22 OF THE '541 PATENT. AT A CLIENT, LOCAL VOUCHER, EXECUTING AN
23 ACCESS CHECKING PROCESS TO DETERMINE WHETHER THE CLIENT HOLDS
24 A PRE-EXISTING PERMISSION FOR A RESOURCE TO ACCESS THE DIGITAL
25 CONTENT.

1 THAT LOCAL VOUCHER? IT IS RIGHT THERE IN THE CODE. IF
2 NOT, REQUESTING PERMISSION FROM AN EXTERNAL SOURCE OR THE
3 RESOURCE TO ACCESS THE DIGITAL CONTENT. IT'S RIGHT THERE IN
4 THE CODE. AVAILABLE? IF NOT, ASK THE SERVER.

5 THE DOCUMENTS, THE CODE AND THE CLAIMS WILL GOVERN YOUR
6 DECISION HERE TODAY. AND NO ONE DISPUTES HOW DR. DEVANBU
7 READS THAT CODE.

8 IN ADDITION TO THE CODE, MEMBERS OF THE JURY, YOU ARE ALSO
9 GOING TO HAVE DOCUMENTS THAT YOU CAN TAKE BACK TO THE JURY
10 ROOM AND READ. AND LIKE I PROMISED YOU, I'M NOT GOING TO GO
11 THROUGH A LOT OF THEM. BUT I DO WANT TO SHOW YOU THREE. AND
12 YOU ARE GOING TO HAVE PAPER COPIES THAT LOOK JUST LIKE THIS
13 (INDICATING). AND YOU ARE GOING TO BE ABLE TO TAKE THEM BACK
14 THERE AND READ THEM CAREFULLY AND COMPARE THEM TO THESE
15 CLAIMS.

16 AND WHAT IS IMPORTANT ABOUT THESE DOCUMENTS, THESE WHITE
17 PAPERS AND WEBSITES, IS THAT THEY WEREN'T WRITTEN FOR THE
18 COURTROOM. THEY WERE WRITTEN FOR THE BOARDROOM. THEY WERE
19 WRITTEN WITH BUSINESS IN MIND, NOT A LAWSUIT.

20 THEY WERE WRITTEN WITH THE IDEA OF INSTRUCTING ADOBE'S
21 CUSTOMERS HOW TO USE THE PRODUCTS.

22 LET'S LOOK AT PLAINTIFF'S 16. ADOBE LICENSE MANAGER.

23 ON THE VERY FIRST PAGE ADOBE LICENSE MANAGER'S DOCUMENT
24 CALLS IT AN EMBEDDED E-LICENSE MANAGEMENT SYSTEM THAT HELPS
25 ORGANIZATIONS MANAGE ADOBE SOFTWARE, E-LICENSES AND MONITOR

1 E-LICENSE USAGE.

2 IT GOES ON TO SAY THAT IT IS TIGHTLY INTEGRATED WITH THE
3 OVERALL ORDERING PROCESSING SYSTEM, AND THAT IT AUTOMATICALLY
4 DOWNLOADS THE APPROPRIATE E-LICENSES FOR SOFTWARE
5 INSTALLATIONS AND PROVIDES REPORTS TO HELP SIMPLIFY
6 RECORDKEEPING FOR INTERNAL CONTROLS.

7 AND THEN, ON PAGE 7 OF EXHIBIT 16, IT TALKS ABOUT
8 E-LICENSE TRACKING. TRACKING. AND HOW ALM MAKES IT EASY TO
9 TRACK HOW MANY E-LICENSES HAVE BEEN DOWNLOADED AND TO WHICH
10 CLIENT MACHINES. JUST LIKE THE '670 PATENT ALLOWED
11 MR. PATTERSON TO TRACK HOW MANY COPIES OF JULIAN LENNON'S SONG
12 WERE DOWNLOADED.

13 AND THEN, ADOBE DESCRIBES HOW ALM WORKS AND HOW IT CHECKS
14 FOR AN E-LICENSE ON A CLIENT MACHINE, ON A USER'S MACHINE, AND
15 THEN VERIFIES THAT THE APPLICATION HAS A PROPER E-LICENSE.

16 IF NO E-LICENSE IS FOUND, IT REQUESTS ONE FROM THE
17 E-LICENSE POOL, MAKING A ONE-TIME CONNECTION TO EITHER THE
18 IN-HOUSE ADOBE LICENSE SERVER OR AN ALM BACK-END SERVICE,
19 DEPENDING ON THE CHOSEN HOSTING OPTION.

20 ONCE AN E-LICENSE IS DOWNLOADED, NO FURTHER COMMUNICATION
21 IS REQUIRED. IT'S ON THE CLIENT.

22 NEXT, I WANT YOU TO LOOK AT EXHIBIT 52. THIS ONE IS FROM
23 ADOBE'S WEBSITE ABOUT LIVECYCLE RIGHTS MANAGEMENT, ES2, IS
24 WHAT IT IS CALLED. IT IS ON ADOBE'S HELP PAGES WHERE
25 CUSTOMERS CAN GO AND RECEIVE INSTRUCTION ABOUT EXACTLY HOW TO

1 USE THEIR PRODUCTS.

2 AND IN ADOBE'S OWN WORDS:

3 "ADOBE LIVECYCLE RIGHTS MANAGEMENT ENSURES THAT ONLY
4 AUTHORIZED USERS CAN USE YOUR DOCUMENTS. AND USING RIGHTS
5 MANAGEMENT ES2 YOU CAN SAFELY DISTRIBUTE ANY INFORMATION THAT
6 YOU HAVE SAVED IN A SUPPORTED FORMAT."

7 IN OTHER WORDS, YOU CAN REGULATE ACCESS TO DIGITAL
8 CONTENT. AND YOU CAN DO IT FOR ADOBE PDF FILES AND YOU CAN DO
9 IT FOR ADOBE FLASH FILES.

10 THE DOCUMENT THEN GOES ON TO DESCRIBE ACCESS CONTROL, AND
11 HOW YOU HAVE THE ABILITY TO TRACK EVENTS, SUCH AS WHEN AN
12 AUTHORIZED OR UNAUTHORIZED USER ATTEMPTS TO OPEN THE DOCUMENT.

13 AND ON THE NEXT PAGE OF ADOBE'S DOCUMENT YOU WILL SEE THIS
14 DIAGRAM WHERE THE FOURTH AND FINAL STEP TALKS ABOUT THE
15 ABILITY, USING LIVECYCLE RIGHTS MANAGEMENT, TO TRACK DOCUMENTS
16 AND MODIFY ACCESS TO THEM USING WEB PAGES.

17 AGAIN, THE DOCUMENTS, THE CODE AND THE CLAIMS.

18 THE LAST DOCUMENT I WANT TO SHOW YOU ON THIS SUBJECT IS
19 THIS ADOBE FLASH ACCESS OVERVIEW FOR VERSION 3.0. AGAIN, YOU
20 WILL SEE IN THE BOTTOM RIGHT CORNER "PUBLISHED BY ADOBE."

21 AND THAT OVERVIEW TALKS ABOUT WHAT FLASH ACCESS DOES AND
22 WHY IT'S IMPORTANT, BECAUSE FLASH ACCESS LETS CONTENT OWNERS
23 AND DISTRIBUTORS CONTROL HOW AND WHERE THEIR CONTENT CAN BE
24 DISTRIBUTED AND EXPERIENCED, PROVIDING END TO END PROTECTION
25 THROUGHOUT THE CONTENT LIFE CYCLE.

1 THINK BACK TO MR. PATTERSON'S TESTIMONY: THROUGHOUT THE
2 CONTENT LIFE CYCLE, KEEPING THAT COPYRIGHTED MATERIAL
3 PROTECTED.

4 THAT WAS THE WHOLE POINT OF THE '541 AND THE '670 PATENT.
5 IT TALKS ABOUT ENCRYPTING FLASH VIDEO FILES, WHICH CAN THEN BE
6 STREAMED OR DOWNLOADED TO VARIOUS PLATFORMS, AND ENFORCES
7 BUSINESS MODELS, SUCH AS ONLINE VIDEO RENTAL.

8 IT WOULD BE PRETTY IMPORTANT TO COMPANIES THAT YOU HEARD
9 USE IT, LIKE HULU, LIKE AMAZON.COM.

10 THIS DOCUMENT THEN GOES ON TO TALK ABOUT, WELL, HOW DO YOU
11 ACQUIRE A LICENSE? IT TALKS ABOUT HOW LICENSE ACQUISITION IS
12 THE PROCESS OF ACQUIRING A LICENSE ALLOWING THE CONSUMER TO
13 DECRYPT AND VIEW THAT PROTECTED CONTENT ACCORDING TO A SET OF
14 USAGE RULES.

15 AND THAT LICENSE ACQUISITION OCCURS WHEN A CLIENT SENDS
16 INFORMATION IDENTIFYING THE REQUESTED CONTENT, AND THE MACHINE
17 TO THE LICENSE SERVER.

18 BUT THEN, IN THE NEXT PARAGRAPH IT SAYS:

19 "IF THE USER IS AUTHORIZED TO ACCESS THE CONTENT, THE
20 LICENSE SERVER ISSUES A LICENSE ALLOWING THE RUNTIME CLIENT TO
21 DECRYPT AND PLAYBACK CONTENT BASED ON THE POLICY AND RIGHTS
22 ASSOCIATED WITH" THAT SPECIFIC CONSUMER'S ACCOUNT.

23 AND IT TALKS ABOUT HOW THIS IS, IN FACT, A KEY FEATURE OF
24 ADOBE FLASH ACCESS. AND JUST LIKE MR. PATTERSON SAID HE
25 DREAMT OF, YOU HAVE PERSISTENT CONTENT PROTECTION. THE

1 CONTENT REMAINS PROTECTED THROUGHOUT THE DISTRIBUTION CHAIN.
2 ONCE THE CONTENT IS PACKAGED, JUST LIKE IN THAT DIGITAL
3 ENVELOPE, IT REMAINS PROTECTED AT ALL TIMES, AND PORTIONS OF
4 IT ARE ONLY DECRYPTED AT THE TIME OF PLAYBACK AND IN
5 ACCORDANCE WITH THE USAGE RULES.

6 THINK ABOUT CLAIM 52:

7 "WHEREIN CREATING THE FILE COMPRISING ENCRYPTING." BECAUSE
8 THE CONTENT IS PACKAGED WITH USAGE RULES AND LICENSING
9 INFORMATION, PROTECTION ALWAYS TRAVELS WITH THE CONTENT. AND
10 IF AN UNLICENSED CONSUMER ATTEMPTS TO PLAY THE CONTENT, THE
11 POLICY EMBEDDED IN IT REDIRECTS THEM SO THEY CAN ACQUIRE A
12 VALID LICENSE FOR THE CONTENT.

13 SOUNDS A LOT LIKE CLAIM 1. IN FACT, IT SOUNDS EXACTLY
14 LIKE CLAIM 1.

15 NOW, WE PROVIDED EVIDENCE THROUGH DR. DEVANBU OF THESE
16 ADDITIONAL INDEPENDENT -- RATHER DEPENDENT CLAIMS ABOUT WHEN
17 YOU REQUEST THE PERMISSION AND RECEIVE THE TOKEN AND
18 SELECTIVELY GRANT THE RESOURCE ACCESS BEING PERFORMED ON THE
19 CLIENT.

20 ABOUT WHERE THE PERMISSION COMPRISES THE UNIQUE CODED KEY
21 CORRESPONDING TO THE DIGITAL CONTENT. AND HOW WHEN YOU
22 REQUEST PERMISSION FROM THE EXTERNAL SOURCE, THAT INITIATES
23 THIS AUTHORIZATION PROCEDURE.

24 YOU HEARD DR. DEVANBU TESTIFY ABOUT THAT. AND AS
25 IMPORTANTLY, YOU HEARD THAT DR. WICKER DIDN'T. HE SAID HE

1 DIDN'T GO BEYOND CLAIM 1, BECAUSE IN HIS MIND IF CLAIM 1 ISN'T
2 INFRINGED, THEN YOU DON'T HAVE TO REACH OPINIONS ON THE
3 OTHERS.

4 HE SAYS HE HASN'T TALKED ABOUT IT.

5 "I DIDN'T TESTIFY ABOUT IT."

6 BUT YOU'VE ALSO HEARD A LOT OF TESTIMONY AND ARGUMENT FROM
7 ADOBE'S SIDE THAT:

8 "WELL, EVEN IF WE DO DO THIS, EVEN IF WE KNEW ABOUT THE
9 '541 AND '670, EVEN IF IT'S INTEGRATED INTO SEVERAL OF OUR
10 PRODUCTS, NO ONE ACTUALLY USES IT. THERE'S JUST NO CUSTOMER
11 DEMAND FOR THIS. IT IS JUST A HANDFUL OF PEOPLE."

12 YOU HEARD WITNESS AFTER WITNESS SAY THAT.

13 BUT WHAT DO THE DOCUMENTS SAY? AND WHAT DO THEIR
14 WITNESSES SAY. THEIR CORPORATE REPRESENTATIVE WHO HAS BEEN
15 HERE IN TRIAL EVERY DAY GOT ON THE STAND AND TOLD YOU THAT THE
16 WHOLE REASON THAT THEY EVEN HAVE SOME OF THIS TECHNOLOGY IS
17 BECAUSE THE CUSTOMERS HAVE THE NEED.

18 HE POINTED OUT LIKE THE MOVIE STUDIOS. THE HOLLYWOOD
19 MOVIE STUDIOS HAVE THE NEED TO PROTECT THEIR CONTENT.

20 HE WENT ON TO SAY THAT, WHEN ASKED WHAT WAS THE BASIS THAT
21 THEY PROVIDED THE INFORMATION TO THEIR CUSTOMERS, WHO TOLD YOU
22 THAT IT WAS A CUSTOMER NEED:

23 "WELL, CUSTOMERS HAVE REQUESTED THE FUTURE." WELL, I
24 THINK HE SAID "THE FEATURE." BUT THE FUTURE IS WHAT
25 MR. PATTERSON WAS CONCERNED ABOUT. CUSTOMERS HAVE REQUESTED

1 THE FEATURE. THEY TOLD US DIRECTLY:

2 "WE NEED TO HAVE OUR CONTENT PROTECTED."

3 AND HE VERIFIED THAT SOME OF THOSE CUSTOMERS INCLUDED HULU
4 AND AMAZON.

5 YOU HEARD OTHER TESTIMONY THAT SUCH CUSTOMERS INCLUDE THE
6 UNITED STATES MILITARY. SO ON THE ONE HAND THEY SAY:

7 "NOT VERY MANY PEOPLE WANT THIS. IT IS NOT THAT BIG OF A
8 DEMAND."

9 ON THE OTHER HAND, WE'RE TALKING ABOUT HOLLYWOOD, AMAZON,
10 HULU AND THE UNITED STATES MILITARY, BEING JUST A FEW.

11 AND IT WAS SO IMPORTANT TO THEM THAT WHEN THEIR CLIENTS
12 REQUESTED IT, THEY DEVELOPED NEW PRODUCTS FOR THEM. I'M
13 PRETTY SURE I HAVE NEVER HAD ADOBE DEVELOP A PRODUCT FOR ME
14 WHEN I'VE ASKED. YOU HAVE TO BE A PRETTY IMPORTANT CLIENT TO
15 GET THAT KIND OF SERVICE.

16 AND SO THEN WE HAD TO GO TO THE DOCUMENTS TO POINT OUT HOW
17 OFTEN THEIR WORDS SAID THESE FEATURES WERE USED. AGAIN,
18 DOCUMENTS WRITTEN FOR THE BOARDROOM, NOT THE COURTROOM.

19 AND YOU REMEMBER LOOKING AT THIS DOCUMENT THAT SAID:

20 "ACROBAT FILES MAY BE SECURED USING PASSWORDS, DIGITAL
21 CERTIFICATES OR USING RIGHTS MANAGEMENT PROVIDED BY ADOBE'S
22 LIVECYCLE RIGHTS MANAGEMENT SERVER."

23 AND THIS DOCUMENT IS ACTUALLY A WHITE PAPER FOR THE HEALTH
24 CARE INDUSTRY. SO THERE'S YET ANOTHER EXAMPLE, ALONG WITH THE
25 MILITARY AND HOLLYWOOD AND HULU AND AMAZON, AGAIN ANOTHER

1 SEGMENT FOR WHICH LIVECYCLE RIGHTS MANAGEMENT SERVER WAS
2 IMPORTANT.

3 AND THERE YOU SEE THAT IT GIVES INSTRUCTIONS ABOUT HOW TO
4 USE YOUR ADOBE LIVECYCLE RIGHTS MANAGEMENT.

5 THEN, YOU ALSO SAW THIS DOCUMENT: "WHAT IS NEW IN ACROBAT
6 PRO X?" A STREAMLINED, SIMPLIFIED USER INTERFACE DISPLAYS THE
7 MOST COMMONLY USED TOOLS."

8 AND IT SHOWED YOU HOW THERE WAS NOW CHANGE BETWEEN ACROBAT
9 AND ACROBAT X AND WHERE YOU WOULD FIND THAT TO SECURE OR
10 PROTECT YOUR DOCUMENTS.

11 AND THEN, IT WENT ON TO SAY THAT IT'S SUCH AN IMPORTANT
12 FEATURE IT'S INSTALLED BY DEFAULT ON THE TOOLBAR WHERE ONLY
13 THE MOST COMMONLY USED TOOLS APPEAR.

14 NOW, ADOBE TRIED TO RUN FROM THOSE DOCUMENTS. MR. HERBACH
15 TOLD YOU ON THE STAND, WHEN I ASKED HIM:

16 "YOU WOULD AGREE WITH ME THAT ONLY THE MOST COMMONLY USED
17 TOOLS APPEAR ON THE TOOLBAR IN ADOBE ACROBAT PRO."

18 AND HIS ANSWER WAS:

19 "NO, I WOULDN'T, ACTUALLY."

20 I THEN, I HAD TO SHOW HIM THE DOCUMENTS THAT I JUST SHOWED
21 YOU.

22 AND WHEN I ASKED HIM:

23 "BY DEFAULT, ONLY THE MOST COMMONLY USED TOOLS APPEAR IN
24 THE TOOLBAR," THEN HE HAD TO ANSWER: "THAT'S WHAT IT SAYS,
25 YES."

1 WE'VE TALKED TO YOU ABOUT WILLFULNESS. AND I HAVE TALKED
2 TO YOU ABOUT INFRINGEMENT. TALKED TO YOU ABOUT THE SOURCE
3 CODE AND TALKED TO YOU ABOUT THE DOCUMENTS. I TALKED TO YOU
4 ABOUT THE CLAIMS. NOW, IT'S TIME TO TALK ABOUT DAMAGES.

5 YOU SAW EVIDENCE, YOU HEARD EVIDENCE ABOUT A NUMBER OF
6 LICENSE AGREEMENTS THAT DIGITAL REG HAS ALREADY ENTERED INTO
7 WITH COMPANIES LIKE MICROSOFT, EA, INTUIT, AVG, RPX, LARGE
8 COMPANIES THAT TOOK LICENSES TO THESE PATENTS FOR THEIR
9 CUSTOMERS.

10 AND THE DIFFERENCE BETWEEN THOSE LICENSE AGREEMENTS AND
11 WHAT WE HAVE HERE IS THAT THOSE LICENSE AGREEMENTS
12 NEGOTIATIONS WERE ACTUAL. THERE WAS A FIGHT ABOUT VALIDITY.
13 THERE WAS A FIGHT ABOUT INFRINGEMENT. AND BY TIME YOU GET
14 THROUGH THE VERDICT FORM TO THIS POINT YOU WILL HAVE ALREADY
15 DETERMINED BOTH INFRINGEMENT AND VALIDITY. SO THOSE ARE OUT
16 OF THE EQUATION.

17 AND THAT'S WHERE THE HYPOTHETICAL NEGOTIATION FACTORS COME
18 IN. AND THAT'S WHY IT IS IMPORTANT TO THINK BACK TO OUR
19 EXPERT'S TESTIMONY ABOUT WHAT THAT HYPOTHETICAL NEGOTIATION
20 WOULD MEAN. AND HOW HE TOOK THE ROYALTY BASE FROM THE
21 PRODUCTS IDENTIFIED IN THIS TRIAL AND CAME UP WITH OVER
22 \$2 BILLION OF TOTAL REVENUE OVER THE ACCUSED TIME PERIOD.

23 BUT FOLLOWING INDUSTRY STANDARDS HE THEN REDUCED THAT
24 NUMBER BY 70 PERCENT. AND THEN, HE APPLIED A 2.5 PERCENT
25 ROYALTY RATE, WHICH HE DEEMED WAS REASONABLE BECAUSE HE

1 LEARNED THAT THERE WERE OTHER LICENSE AGREEMENTS THAT HE FELT
2 APPLIED THAT DIGITAL REG HAD ALREADY ENTERED INTO.

3 AND HE LOOKED AT WHAT ADOBE REQUIRES THEMSELVES,
4 5.5 PERCENT, AND CONSIDERED THAT 2.5 PERCENT WAS LESS THAN
5 HALF OF THAT.

6 AND THAT'S HOW HE CAME UP WITH A REASONABLE ROYALTY
7 FIGURE. AND WE WOULD ASK THAT YOU CONSIDER THAT EVIDENCE AND
8 YOU CONSIDER YOUR ANSWER TO THIS QUESTION.

9 BUT I ALSO NEED TO TALK TO YOU ABOUT VALIDITY. THIS
10 CONCEPT THAT ADOBE IS ARGUING THAT EVEN THOUGH MR. PATTERSON
11 WORKED ON THIS IDEA DECADES AGO, WORKED ON IT FOR YEARS. IT
12 SPENT YEARS IN THE PATENT OFFICE AND ULTIMATELY WAS GRANTED BY
13 THE UNITED STATES PATENT OFFICE, THAT AFTER ALL THIS TIME, ALL
14 OF A SUDDEN HIS PATENTS ARE INVALID. SHOULDN'T BE CONSIDERED.
15 NEED TO BE THROWN OUT.

16 AND IT'S THEIR BURDEN TO PROVE THIS TO YOU. CLEAR AND
17 CONVINCING EVIDENCE, A VERY HIGH STANDARD OF PROOF. AND THE
18 EVIDENCE HAS SHOWN THAT THEY HAVE FAILED TO MEET THEIR BURDEN.

19 THE EVIDENCE HAS SHOWN THAT AFTER WORKING FOR THREE YEARS
20 DR. WICKER CONCEDED HE COULDN'T IDENTIFY A SINGLE REFERENCE,
21 NOT ONE, THAT TEACHES ALL THE ELEMENTS OF THE SIX ASSERTED
22 CLAIMS. AND HE WAS LOOKING. HE DIDN'T GIVE YOU AN OPINION
23 THAT ANY ONE OF THOSE CLAIMS WAS ANTICIPATED. AND HE ADMITTED
24 THAT ADOBE WAS FORCED TO COBBLE TOGETHER MULTIPLE REFERENCES
25 IN ORDER TO ALLEGE THAT:

1 "OH, THIS WAS OBVIOUS. YOU TAKE THIS PATENT OVER HERE, A
2 FEW PIECES OF IT, AND YOU TAKE THIS PATENT OVER HERE, A FEW
3 PIECES OF THIS, IT IS ABSOLUTELY OBVIOUS."

4 THAT MR. PATTERSON SHOULD HAVE KNOWN THAT. THAT THE
5 PATENT OFFICE SHOULD HAVE KNOWN THAT. THAT THE PATENTS NEVER
6 SHOULD HAVE BEEN GRANTED.

7 THE EVIDENCE ISN'T THERE FOR THAT. PROFESSOR SCHULL
8 CONFIRMED THAT HIS SYSTEM GENERATES THE PASSWORD AT THE
9 SERVER, TRANSMITS IT AND STORES IT IN PRECISELY THE SAME
10 STATE. THAT NOTHING HAPPENS.

11 ADOBE IS TRYING TO CONFUSE THESE ISSUES BY REFERENCING TO
12 ENCRYPTION AND DECRYPTION THAT OCCUR IN PARTS OF THE SCHULL
13 PROCESS THAT AREN'T RELEVANT TO ANY OF THE ASSERTED CLAIMS.

14 ADOBE COULDN'T IDENTIFY ANY REFERENCE THAT TAUGHT TRACKING
15 IN THE WAY -- IN THE EXACT WAY CLAIMED BY THE '670 PATENT.

16 AND, FINALLY, THE BEST ADOBE COULD DO WAS TRY TO TRICK
17 DR. KELLER WITH A REFERENCE FROM A BACKGROUND SECTION OF THE
18 SCHULL PATENT THAT WAS TALKING ABOUT OTHER SYSTEMS, NOT
19 SCHULL.

20 ADOBE HAS FAILED TO MEET THEIR BURDEN.

21 AT THIS POINT, MEMBERS OF THE JURY, I WANT TO GO OVER THE
22 VERDICT FORM AND TELL YOU THE ANSWERS THAT DIGITAL REG THINKS
23 THE EVIDENCE SUPPORTS; THAT THE DOCUMENTS, THE CODE, AND THE
24 CLAIMS SUPPORT.

25 AND WHEN I DO THAT I ALSO WANT TO MENTION SOMETHING THAT

1 CAME UP IN OPENING STATEMENT. IT HAS BEEN A THEME THROUGHOUT
2 THIS TRIAL. AND I WANT TO JUST TAKE A MOMENT TO ADDRESS IT.

3 YOU WERE ASKED IN OPENING STATEMENT BY ADOBE'S LAWYER
4 THAT, WELL, THERE IS TWO KINDS OF CASES IN PATENT LAW. THERE
5 IS A BIG COMPANY VERSUS ANOTHER BIG COMPANY. THAT'S ONE KIND
6 OF A CASE. AND THEN, THERE'S ANOTHER KIND OF CASE WHERE IT IS
7 A BIG COMPANY VERSUS A SMALL COMPANY THAT MAYBE WASN'T AS
8 SUCCESSFUL.

9 WHICH KIND OF CASE IS THIS? THEY ASKED YOU TO THINK ABOUT
10 THAT.

11 NOWHERE IN THE VERDICT FORM ARE YOU GOING TO BE ASKED FOR
12 THAT QUESTION, BECAUSE THERE IS NO LAW THAT SAYS A BIG COMPANY
13 IS TREATED ANY DIFFERENTLY THAN A SMALL COMPANY. YOU'RE NOT
14 GOING TO BE ABLE TO ASK THAT QUESTION -- ANSWER THAT QUESTION,
15 BECAUSE IT IS NOT AN ISSUE IN THIS CASE. DIGITAL REG IS
16 PROTECTED BY THE UNITED STATES PATENT LAWS, JUST LIKE EVERYONE
17 ELSE.

18 NOW, THE VERY FIRST QUESTION YOU WILL BE ASKED IS
19 INFRINGEMENT. IS THERE DIRECT INFRINGEMENT? HAS DIGITAL REG
20 PROVEN IT IS SIMPLY MORE LIKELY TRUE THAN NOT TRUE THAT ADOBE
21 HAS INFRINGED ANY OF THE FOLLOWING CLAIMS?

22 AND THE FIRST QUESTION YOU WILL BE ASKED IS ABOUT THE '670
23 PATENT IN CLAIM 45, ADOBE ACTIVATION.

24 DR. DEVANBU, THROUGH HIS REVIEW OF THE DOCUMENTS AND THE
25 CODE AND ANALYZING THE CLAIMS TELLS YOU THAT THE ANSWER IS:

1 YES.

2 NOW, NEXT YOU WILL BE ASKED ABOUT DIRECT INFRINGEMENT AND
3 HAS THE ADOBE LIVECYCLE PRODUCT INFRINGED THE '670 PATENT,
4 CLAIM 45, AND THE '670 PATENT, CLAIM 52 DIRECTLY.

5 AND REMEMBER WHEN I HAD MR. HERBACH ON THE STAND AND I WAS
6 ASKING HIM QUESTIONS? I ASKED HIM:

7 "DOES ADOBE USE LIVECYCLE ITSELF?"

8 AND HIS ANSWER WAS: "YES."

9 THEY USE THE PRODUCT THEMSELVES. IF YOU FIND IT
10 INFRINGES, THEN THE ANSWER IS: YES. IT'S DIRECT INFRINGEMENT
11 BY ADOBE.

12 AND AFTER YOU ANSWER THE DIRECT INFRINGEMENT QUESTIONS,
13 YOU WILL BE ASKED THE INDIRECT INFRINGEMENT QUESTIONS. THOSE
14 ARE THE ONES INVOLVING THE CUSTOMERS. HAS DIGITAL REG PROVEN
15 IT IS MORE LIKELY THAN NOT THAT ADOBE INDIRECTLY INFRINGED ANY
16 OF THE FOLLOWING CLAIMS?

17 YOU WILL REMEMBER SOME OF THE WITNESSES TRIED TO SAY THAT
18 THEY WEREN'T REALLY INSTRUCTING THEIR USERS HOW TO USE THE
19 SOFTWARE. THOSE WHITE PAPERS AND HELP PAGES DIDN'T MEAN
20 ANYTHING. BUT THEY UNDERSTAND THAT THE CUSTOMERS ARE AN
21 IMPORTANT PART OF THIS PROCESS, AND THAT THEY INSTRUCT THESE
22 CUSTOMERS AND ARE IN CONCERT WITH THE CUSTOMERS INDIRECTLY
23 INFRINGE EACH OF THE CLAIMS.

24 DR. DEVANBU WENT THROUGH THE CODE OF THE '541 PATENT AND
25 TOLD YOU DEFINITIVELY THAT: YES, ADOBE ACTIVATION IS

1 INFRINGED. AND THERE WAS NO EVIDENCE SUPPORTED BY DR. WICKER
2 AGAINST ANY OF HIS OPINIONS REGARDING THE DEPENDENT CLAIMS.

3 THE SAME CAN BE SAID FOR THE TRACKING PATENT. DR. DEVANBU
4 TESTIFIED THAT THE TRACKING PATENT, THE '670 PATENT, IS
5 INFRINGED BY ADOBE ACTIVATION.

6 NEXT YOU ARE GOING TO BE ASKED ABOUT FLASH. THAT CONTENT
7 PROTECTED FLASH THAT THE HOLLYWOOD STUDIOS USE. AND IS IT
8 MORE LIKELY THAN NOT THAT ADOBE INDIRECTLY INFRINGED EACH OF
9 THOSE CLAIMS? ONCE AGAIN, BASED ON THE DOCUMENTS, BASED ON
10 THE CODE AND BASED ON THE CLAIMS, THE ANSWER IS: YES.

11 AND THAT THE INDEPENDENT CLAIM OF THE '541 IS INFRINGED.
12 YOU DIDN'T HEAR EVIDENCE FROM DR. WICKER THAT THE DEPENDENT
13 CLAIMS WERE NONINFRINGEMENT. YOU ONLY HEARD EVIDENCE FROM
14 DIGITAL REG.

15 WE ALSO WENT THROUGH THE LIVECYCLE PRODUCTS. LIVECYCLE,
16 YOU SAW PRODUCT MANUALS. YOU HEARD TESTIMONY. AND, ONCE
17 AGAIN, YOU HEARD THAT IT WAS MORE LIKELY TRUE THAN NOT TRUE
18 THAT CLAIM 1 OF THE '541 PATENT WAS INFRINGED. AND THAT CLAIM
19 45 OF THE '670 PATENT, ALONG WITH ITS DEPENDENT CLAIM, WERE
20 ALSO INFRINGED. THE ANSWER TO THOSE QUESTIONS IS: YES.

21 NEXT YOU WILL BE ASKED ABOUT INVALIDITY. AND WHEN YOU ARE
22 ASKED ABOUT INVALIDITY, I WANT YOU TO THINK BACK TO DR. KELLER
23 AND HIS TESTIMONY, HOW HE TALKS TO YOU ABOUT HOW NOT ALL THE
24 REFERENCES WERE CONSIDERED, AND THE ONES THAT WERE SCHULL, IT
25 DIDN'T INCLUDE ALL OF THE ELEMENTS. AND THEY HAVE TO INCLUDE

1 THOSE ELEMENTS TO BE FOUND INVALID.

2 HE THEN DID THE SAME THING FOR THE '670 PATENT. AND ONCE
3 AGAIN TALKED ABOUT HOW THIS COMBINATION THAT WAS SO OBVIOUS TO
4 ADOBE ISN'T OBVIOUS AT ALL. IT DOESN'T IN COMBINATION
5 INVALIDATE THE '670 PATENT.

6 SO WHEN YOU ARE FILLING OUT YOUR VERDICT FORM, CONFIRM
7 WHAT THE PATENT OFFICE HAS ALREADY SAID TWICE: PATRICK
8 PATTERSON INVENTED THE '541 PATENT AND THE '670 PATENT. IT
9 WASN'T OBVIOUS, AND NO ONE BEAT HIM TO IT.

10 THE ANSWER AS TO WHETHER THE '670 PATENT WAS ANTICIPATED
11 IS: NO.

12 THE ANSWER AS TO WHETHER THE '541 AND THE '670 PATENTS
13 WERE OBVIOUS, WHEN YOU COBBLE TOGETHER DIFFERENT PIECES OF
14 PATENTS AND MISHMASH THEM ALL INTO ONE, THE ANSWER THERE IS:
15 NO.

16 NOW, AT THIS POINT YOU WILL READ THIS QUESTION: IF YOU
17 FOUND THAT AT LEAST ONE PRODUCT INFRINGES AT LEAST ONE VALID
18 PATENT, AND YOU ANSWERED "YES," WELL, THEN YOU MOVE ON TO THE
19 REMAINING QUESTIONS. AND THE FIRST QUESTION YOU WILL BE ASKED
20 IS DAMAGES.

21 AND I TALKED ABOUT THE METHODOLOGY THAT WE'VE ESTABLISHED
22 ABOUT HOW WE CAME UP WITH OUR ROYALTY RATE BASING IT OFF OF
23 BOTH LICENSES THAT WE'VE ENTERED INTO AND LICENSE AGREEMENT
24 RATES THAT ADOBE PUTS OUT THERE. AND HOW OURS WAS LESS THAN
25 HALF OF WHAT THEY PUT OUT THERE THEMSELVES.

1 SO WE ASK YOU TO FILL IN THAT RATE AT 2.5 PERCENT, AND TO
2 FOLLOW THE PATH THAT YOU'VE HEARD OF DURING THE CASE ABOUT HOW
3 THERE'S \$2.066 BILLION OF A TOTAL ACCUSED REVENUE FOR ALL OF
4 THE PRODUCTS. BUT GO AHEAD AND APPLY THAT INDUSTRY STANDARD
5 DISCOUNT. KNOCK 70 PERCENT OF THAT NUMBER AWAY. AND THAT
6 GETS THE NUMBER FOR WHICH YOU COMPUTE THE ROYALTY RATE TO
7 619,860,000.

8 THAT WOULD MEAN THE DAMAGES AWARD IS \$15,496,500 FOR THE
9 INFRINGEMENT THAT DIGITAL REG HAS SUFFERED AT THE HANDS OF
10 ADOBE. ADOBE, WHO THEY REACHED OUT TO TO TRY TO FORM A
11 BUSINESS RELATIONSHIP. THEY HAD A MEETING. THEY GAVE THEM
12 DOCUMENTS. AND ADOBE TOLD THEM "NO."

13 THAT'S WHAT ADOBE OWES.

14 THE FINAL QUESTION THAT YOU WILL BE ASKED ON YOUR VERDICT
15 FORM, MEMBERS OF THE JURY, IS WILLFULNESS. AND AS YOU
16 CONSIDER THAT QUESTION I WANT YOU TO CONSIDER THE MOUNTAIN OF
17 EVIDENCE THAT YOU'VE SEEN OF NOTICE AFTER NOTICE AFTER NOTICE
18 BY ADOBE'S OWN PATENTS WHERE WE HAD TESTIMONY THAT THEIR
19 IN-HOUSE LAWYERS WERE INVOLVED IN THE PROCESS.

20 WE HAD TESTIMONY THAT THEIR CORPORATE REPRESENTATIVE SAT
21 ON A PATENT REVIEW BOARD THAT WORKED WITH ENGINEERS TO
22 DETERMINE WHETHER OR NOT IDEAS WERE PATENTABLE. CONSIDER WHAT
23 ADOBE KNEW AND WHEN THEY KNEW IT. AND CONSIDER THE CONTENT
24 AND THE DISCUSSIONS BETWEEN MR. VENTERS AND ADOBE VENTURES
25 ABOUT THE ADOBE VALUE PROPOSITION AND HOW IT SPECIFICALLY

1 IDENTIFIED THIS '670 PATENT BY NAME, AND THE '541 PATENT BY
2 NUMBER.

3 THE ANSWER TO WHETHER OR NOT ADOBE'S INFRINGEMENT WAS
4 WILLFUL IS: YES. THEY SHOWED A RECKLESS DISREGARD. I WANT
5 TO THANK YOU FOR ALL YOUR TIME AND ATTENTION DURING THE LAST
6 WEEK-AND-A-HALF IT HAS BEEN AN HONOR TO PRESENT THIS CASE IN
7 FRONT OF YOU. AND THANK YOU FOR YOUR TIME.

8 AND I'M GOING TO HAVE A CHANCE TO GET UP HERE AFTER
9 ADOBE'S HAD THEIR CLOSING ARGUMENT AND TALK TO YOU FOR JUST A
10 FEW MINUTES MORE TO RESPOND TO SOME OF THEIR ARGUMENTS AND TO
11 WRAP THINGS UP.

12 BUT AS ADOBE'S LAWYERS GO THROUGH THEIR ARGUMENTS, THINK
13 ABOUT WHAT ADOBE KNEW AND WHEN THEY KNEW IT. THINK ABOUT THE
14 DOCUMENTS, THE CODE AND THE CLAIMS. BECAUSE IF YOU FOCUS ON
15 THOSE THINGS YOU WILL FIND THAT THE ANSWER THAT THE LAW
16 REQUIRES IN THIS CASE IS A VERDICT FOR THE PLAINTIFF, DIGITAL
17 REG.

18 **THE COURT:** ALL RIGHT. WE WILL TAKE OUR BREAK. IT'S
19 10:25. WE WILL BREAK UNTIL 10:40. I WOULD LIKE TO SEE THE
20 ATTORNEYS FOR JUST A MOMENT.

21 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

22 **THE COURT:** SO I HAVE TWO NOTES. ONE SAYS JUROR 608,
23 MICHAEL BANE, HAS A MEDICAL PROCEDURE FRIDAY, SEPTEMBER 5TH AT
24 7 A.M. TO 7:30 A.M. IN SAN JOSE.

25 "IT IS LIKELY A 1.5 HOUR DRIVE TO THE COURTHOUSE.

1 HOPEFULLY I CAN BE HERE BY NINE A.M."

2 THEN, I HAVE ANOTHER NOTE:

3 "TODAY AND TOMORROW I HAVE COMMITMENTS FOR WORK MADE BASED
4 ON A RECESS TIME OF 1:30 P.M." THAT IS AARON O'DELL, WHO IS
5 JURY NUMBER THREE. SO, MAYBE YOU CAN TALK ABOUT THIS AMONGST
6 YOURSELVES. ONE SOLUTION IS TO EXCUSE BOTH OF THEM. IT WILL
7 CUT INTO OUR DELIBERATION TIME. WE ONLY NEED SIX. WE WOULD
8 STILL HAVE SEVEN. WE WOULD BE MORE LIKELY TO HAVE UNANIMITY,
9 PERHAPS, AND LESS LIKELY TO HAVE A MISTRIAL OR HUNG JURY IF WE
10 HAVE FEWER JURORS WHO HAVE TO AGREE. SO YOU MIGHT DECIDE
11 LET'S JUST EXCUSE THOSE TWO. AND IF WE DON'T EXCUSE THOSE
12 TWO, WE CERTAINLY HAVE TO LET THE MEDICAL GUY HAVE HIS MEDICAL
13 APPOINTMENT. I CAN INQUIRE FURTHER INTO THIS WORK COMMITMENT,
14 BUT WE COULD JUST LET THAT HAPPEN AND LIKELY THAT THE CASE
15 WOULDN'T BE DECIDED AS QUICKLY.

16 SO UNLESS YOU KNOW RIGHT OFF THE BAT FOR SURE WHAT YOU
17 WANT TO DO, YOU CAN THINK ABOUT IT AND LET ME KNOW AT THE END
18 OF THE BREAK. I WOULD WANT TO TELL THEM AT THE END OF THE
19 CLOSING ARGUMENT, BECAUSE I SHOULDN'T LET THEM START
20 DELIBERATING WITH EXCESS PEOPLE IF WE ARE GOING TO EXCUSE THEM
21 RIGHT AWAY. SO WE NEED TO DECIDE BEFORE DELIBERATIONS START.

22 **MR. REINES:** YOUR HONOR, A QUICK ISSUE ON THE VERDICT
23 FORM?

24 **THE COURT:** YES.

25 **MR. REINES:** THE QUESTIONS, IF I HAVE IT RIGHT,

1 CONTAIN AN EXCESSIVE -- AN EXCESS NUMBER. SO IT STATES
2 "THREE, FOUR AND FIVE" WHEN IT SHOULD BE FOUR. THIS IS AT
3 PAGE 4, LINE 19.

4 **MS. GLAUSER:** I THINK WHEN WE REMOVED THE WRITTEN
5 DESCRIPTION QUESTION THE NUMBERING DIDN'T GET FIXED IN THE
6 PARAGRAPH THAT SAYS:

7 "IF YOU ANSWERED 'YES' TO ONE AND TWO, AND 'NO' TO THREE
8 AND FOUR, THEN MOVE ON."

9 IT SHOULD BE TO FIVE AND SIX.

10 **THE COURT:** OH, I SEE WHAT YOU ARE SAYING.

11 OKAY. I WILL FIX THAT.

12 **MR. REINES:** THANK YOU.

13 (RECESS TAKEN AT 10:25 A.M. AND RESUMED AT 10:40 A.M.)

14 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

15 **THE CLERK:** REMAIN SEATED COME TO ORDER COURT IS BACK
16 IN SESSION.

17 **THE COURT:** SO THIS BOOK IS NOT -- I DON'T KNOW IF
18 I'M MISUNDERSTANDING. THIS BOOK ISN'T GOING INTO EVIDENCE.

19 WHAT I WANT -- WHAT I SAID COULD GO INTO EVIDENCE IS A
20 PIECE OF PAPER THAT SAYS EXCERPTS OF ADOBE SOURCE CODE, BUT IT
21 WOULD ONLY HAVE THE LINES THAT WERE ON -- WHAT'S HIS NAME'S
22 SLIDE. LIKE A THREE-PAGE DOCUMENT AT MOST, NOT ALL THE SOURCE
23 CODE.

24 **MR. REINES:** WE REMINDED THEM OF THAT.

25 **THE COURT:** OKAY.

1 **MR. DINOVO:** SO TAKING A SINGLE LINE IS LIKE TAKING A
2 LINE OUT OF A BOOK. YOU CAN'T --

3 **THE COURT:** THAT'S WHAT IT'S GOING TO BE.

4 OKAY.

5 **THE CLERK:** READY FOR JURY?

6 **THE COURT:** YOU DON'T HAVE TO HAVE IT AT ALL, BUT I
7 TOLD YOU FROM THE BEGINNING WE ARE NOT GOING TO HAVE A WHOLE
8 BOOK OF SOURCE CODE THAT NOBODY CAN READ. SO, NO, ABSOLUTELY
9 NOT.

10 **THE CLERK:** WE ARE READY FOR YOU.

11 (PROCEEDINGS HELD IN THE PRESENCE OF THE JURY.)

12 **THE COURT:** I'M SORRY. DID YOU REACH ANY AGREEMENT
13 ON THAT MATTER WE TALKED ABOUT?

14 **MR. REINES:** WE ARE GOING TO LEAVE IT AS IS.

15 **THE COURT:** OKAY.

16 PLEASE BE SEATED. YOU MAY PROCEED.

17 **MS. MEHTA:** THANK YOU, YOUR HONOR.

18 **THE COURT:** NOW, I OFTEN REMIND PEOPLE WHEN THEY ARE
19 RUNNING CLOSE TO THEIR TIME, BUT SINCE I DON'T KNOW HOW YOU
20 HAVE DIVIDED IT UP, I WON'T BE ABLE TO DO THAT.

21 **MS. MEHTA:** I THINK WE WILL BE ABLE TO TAKE CARE OF
22 THAT OURSELVES. THANK YOU, THOUGH.

23 CLOSING ARGUMENT

24 **MS. MEHTA:** GOOD MORNING.

25 THE FIRST THING I WANT TO DO IS THANK YOU AGAIN FOR YOUR

CLOSING ARGUMENT - MEHTA

1 TIME AND YOUR ATTENTION OVER THE LAST TWO WEEKS.

2 I THANKED YOU FOR IT IN ADVANCE, AND NOW I CAN SAY, AFTER
3 HAVING WATCHED YOU OVER THE LAST TWO WEEKS, THAT I KNOW YOU
4 HAVE BEEN PAYING ATTENTION, YOU'VE BEEN TAKING NOTES, AND WE
5 REALLY APPRECIATE IT BECAUSE, AS I EXPLAINED DURING THE
6 OPENING, THIS IS AN IMPORTANT CASE FOR ADOBE.

7 MR. ELLWANGER MADE A POINT DURING HIS CLOSING OF REMINDING
8 YOU OF A QUESTION THAT I ASKED YOU TO ASK YOURSELVES DURING
9 THE OPENING. BUT I THINK HE MAY HAVE MISREMEMBERED WHAT I
10 ACTUALLY SAID.

11 THIS IS NOT A CASE ABOUT BIG COMPANIES VERSUS SMALL
12 COMPANIES OR BIG COMPANIES VERSUS BIG COMPANIES. WHAT I TOLD
13 YOU DURING THE OPENING WAS THAT I WANTED YOU TO LISTEN FOR THE
14 EVIDENCE TO SEE WHAT TYPE OF PATENT CASE THIS WAS.

15 AND I DESCRIBED THAT THERE ARE TWO DIFFERENT KIND OF
16 PATENT CASES. NOTHING TO DO WITH BIG COMPANIES OR SMALL
17 COMPANIES.

18 THE CASES HAVE TO DO WITH ACTUAL INNOVATION AND ACTUAL
19 INVENTION. AND WHAT I ASKED YOU TO LISTEN FOR WAS EVIDENCE
20 ABOUT WHETHER THIS WAS THE FIRST TYPE OF CASE, WHERE THERE'S A
21 REAL INVENTION WHERE SOMEONE REALLY CAME UP WITH SOMETHING
22 NEW, AND THEN WORKED TO MAKE IT HAPPEN, AS PROFESSOR SCHULL
23 SAID, TAKING THE INVENTION AND THEN PUTTING IN THE TIME AND
24 THE MONEY AND MAKING AN INNOVATION. AND WHETHER IT WAS THAT
25 KIND OF A CASE AND WHETHER IT WAS A CASE WHERE SOMEBODY TOOK

1 THAT TECHNOLOGY AND THEN TRIED TO COMPETE; WHETHER IT WAS A
2 CASE ABOUT TECHNOLOGY.

3 AND THEN I DESCRIBED THAT THERE WERE ANOTHER KIND OF CASE,
4 DIFFERENT PATENT CASES. CASES THAT ARE NOT ABOUT REAL
5 INVENTION OR REAL INNOVATION. THEY ARE CASES ABOUT SOMEBODY
6 THAT HAS A PATENT AND THE DEFENDANT THAT HAS A PRODUCT OR SET
7 OF PRODUCTS THAT MAKE MONEY, AND A PLAINTIFF THAT WANTS A CUT
8 OF THAT; CASES THAT ARE ABOUT MONEY. AND I ASKED YOU TO
9 LISTEN CAREFULLY OVER THE COURSE OF THE TWO WEEKS TO HELP
10 YOURSELVES FIGURE OUT WHAT THIS CASE IS.

11 I KNOW YOU HAVE BEEN PAYING ATTENTION, SO I KNOW THAT
12 YOU'VE SEEN THE TESTIMONY FROM MR. FARLEY. REMEMBER, HE WAS
13 THE MONEY GUY FOR DIGITAL REG. HE'S NOT A TECHNOLOGIST. HE'S
14 THE MONEY GUY. AND WHAT HE SAID WAS, THEY'VE BEEN TRYING TO
15 TAKE THE PATENT THAT THEY HAVE, THAT PATENT THAT MR. ELLWANGER
16 WAS SHOWING YOU ON DAY ONE, AND MAKE SOMETHING OF IT FOR
17 YEARS. AND THEY HAVEN'T BEEN SUCCESSFUL.

18 AND MR. VENTERS EXPLAINED, THE MARKETING GUY, THAT THEY
19 HAVE HAD THIS PATENT AND THEY HAVE BEEN TRYING TO MAKE
20 SOMETHING OUT OF IT FOR YEARS.

21 AND ASIDE FROM THE SETTLEMENTS THAT YOU'VE SEEN OVER THE
22 COURSE OF THE CASE, THEY HAVEN'T MADE ANYTHING FROM THE
23 PATENT.

24 SO THEN ASK YOURSELVES, WHEN YOU GO BACK INTO THAT JURY
25 ROOM, IS THIS A CASE ABOUT TECHNOLOGY AND ABOUT WHETHER THERE

CLOSING ARGUMENT - MEHTA

1 WAS A REAL INVENTION AND A REAL QUESTION AS TO WHETHER ADOBE
2 IS USING THAT INVENTION, OR WHETHER THIS IS JUST A CASE ABOUT
3 MONEY.

4 NOW, IN ORDER TO HELP YOU CONSIDER THAT QUESTION AND
5 DECIDE THESE ISSUES, WHEN YOU GO BACK INTO THE JURY ROOM, I
6 PRESENTED TO YOU TWO KEY ISSUES IN THE OPENING. AND THOSE TWO
7 KEY ISSUES ARE STILL THE KEY ISSUES IN THE CASE.

8 THE FIRST I ASKED YOU TO THINK ABOUT, AND WE HAVE HEARD SO
9 MUCH TESTIMONY AND EVIDENCE ABOUT IT OVER THE LAST TWO WEEKS,
10 IS WHETHER THE ADOBE PRODUCTS AT ISSUE ARE IDENTICAL TO THE
11 CLAIMS OF THE PATENTS-IN-SUIT.

12 AND THE SECOND QUESTION THAT I ASKED YOU TO ASK YOURSELVES
13 AND CONSIDER IS, DID MR. PATTERSON REALLY INVENT THIS IDEA OF
14 PROTECTING ELECTRONIC CONTENT AND COPYRIGHTABLE MATERIALS OR
15 WAS IT PROFESSOR SCHULL WHO WAS THINKING ABOUT THE VERY SAME
16 THING AND DOING THE VERY SAME THING YEARS BEFORE.

17 SO THOSE ARE THE TWO QUESTIONS I ASKED YOU TO CONSIDER
18 OVER THE LAST TEN DAYS. AND YOU'VE DONE THAT. I KNOW YOU
19 HAVE BEEN PAYING ATTENTION. I WOULD ASK YOU TO GO BACK AND
20 REVIEW YOUR NOTES AND DISCUSS THOSE ISSUES.

21 WHILE YOU'RE DELIBERATING, THERE ARE OTHER QUESTIONS THAT
22 HAVE COME UP OVER THE COURSE OF THE LAST TEN DAYS THAT I WOULD
23 ALSO ASK YOU TO PLEASE CONSIDER. THE FIRST OF THOSE IS
24 ACTUALLY ONE THAT MR. ELLWANGER INTRODUCED IN THE OPENING AND
25 THAT HE RE-INTRODUCED TODAY. AND AS I TOLD YOU IN THE

CLOSING ARGUMENT - MEHTA

1 OPENING, WE AGREE COMPLETELY THAT THIS IS A KEY ISSUE IN THE
2 CASE. WHAT DID THEY KNOW AND WHEN DID THEY KNOW IT?

3 BUT ASK YOURSELVES THAT QUESTION NOT ONLY FOR ADOBE, BUT
4 ALSO FOR DIGITAL REG. WHAT DID MR. FARLEY KNOW? WHAT DID
5 MR. VENTERS KNOW, AND WHEN DID THEY KNOW IT? AND THEN ASK
6 YOURSELF THAT QUESTION FOR PROFESSOR SCHULL. WHAT DID HE KNOW
7 ABOUT THE PROBLEM OF PROTECTING ELECTRONIC CONTENT AND WHEN
8 DID HE KNOW THE SOLUTION? AND HOW DOES THAT COMPARE TO WHAT
9 WE HEARD FROM MR. PATTERSON. THESE ARE GOING TO BE KEY
10 ISSUES.

11 ANOTHER KEY ISSUE THAT'S COME UP OVER THE COURSE OF THE
12 LAST TEN DAYS, CREDIBILITY. CREDIBILITY. YOU HAVE SEEN FOR
13 YOURSELF IN PERSON, LIVE, IN FULL COLOR ALL OF THE TESTIMONY
14 OF THE PEOPLE ON BOTH SIDES OF THE STORY.

15 AND THE REASON THAT WE'VE ASKED YOU HERE AND WE HAVE TAKEN
16 YOU AWAY FROM YOUR LIVES FOR THE LAST TWO WEEKS IS SO YOU CAN
17 CONSIDER THE TESTIMONY OF ALL OF THOSE PEOPLE AND WHETHER OR
18 NOT THE TESTIMONY IS CREDIBLE.

19 AND THEN THE FINAL THING, AFTER YOU WEIGH THESE FOUR
20 QUESTIONS, THAT I WOULD ASK YOU TO CONSIDER BASED ON ALL THE
21 EVIDENCE YOU'VE SEEN AND YOUR ANALYSIS OF THESE FOUR QUESTIONS
22 IS, FAIRNESS.

23 WHAT IS THE RIGHT OUTCOME IN THIS CASE? WHAT IS FAIR?
24 DID ADOBE REALLY DO ANYTHING WRONG? IS THIS REALLY A CASE
25 ABOUT TECHNOLOGY OR IS THIS JUST A CASE ABOUT MONEY?

CLOSING ARGUMENT - MEHTA

1 NOW, THE WAY WE HAVE DECIDED TO SPLIT THINGS UP SO YOU
2 GUYS DON'T GET TOO SICK OF ME, IS I'M GOING TO ADDRESS THE
3 FIRST TWO QUESTIONS. I'M GOING TO ADDRESS THE QUESTION ABOUT
4 WHETHER THE ADOBE PRODUCTS WORK IDENTICALLY TO THE CLAIMS OF
5 THE PATENT AND I'M GOING TO ADDRESS THE INVALIDITY ISSUES.
6 AND THEN MY COLLEAGUE, MR. REINES, WHO YOU HAVE ALSO GOTTEN TO
7 KNOW OVER THE LAST TWO WEEKS, HE'S GOING TO TALK TO YOU ABOUT
8 THE LAST THREE QUESTIONS.

9 SO LET'S START WITH WHAT IS THIS CASE NOT ABOUT, AND THEN
10 WE CAN TALK ABOUT QUESTION 1.

11 SO I GAVE YOU THE FIVE THINGS THAT WE WOULD SUBMIT THIS
12 CASE IS ABOUT, THE FIVE QUESTIONS THAT WE WOULD ASK THAT YOU
13 TAKE THE TIME TO CONSIDER.

14 WHAT THE CASE IS NOT ABOUT, AND THIS HAS BECOME ABUNDANTLY
15 CLEAR OVER THE LAST TEN DAYS, IS THIS IS NOT A CASE ABOUT
16 STOLEN PROPERTY. IT WAS THE FIRST LINE YOU HEARD LAST MONDAY.
17 GUESS WHAT? THE EVIDENCE JUST DOESN'T STACK UP. THIS IS NOT
18 A CASE ABOUT STOLEN PROPERTY.

19 THIS IS NOT A CASE ABOUT THE ADOBE PATENTS THAT WERE ALL
20 GRANTED OVER THE DIGITAL REG PATENTS, ABOUT THE ADOBE PATENTS
21 THAT REFLECT THE HARD WORK OF PEOPLE LIKE MR. HERBACH AND
22 MR. BETLEM.

23 AND IT'S NOT A CASE ABOUT SUPERFICIAL EVIDENCE OR
24 ARGUMENTS. IT'S NOT ABOUT GOING THROUGH A STACK OF DOCUMENTS
25 AND HIGHLIGHTING THE WORD "TRACK" WHENEVER IT APPEARS. OR A

1 TETRIS GAME OF PATTERSON, PATTERSON, PATTERSON THAT ARE JUST
2 PICKED OUT OF A DOCUMENT.

3 THE JOB THAT YOU'RE HERE TO DO, AS YOU'VE BEEN INSTRUCTED
4 BY THE COURT, IS TO CONSIDER THE CLAIMS OF THE PATENT AND THEN
5 CONSIDER THE EVIDENCE AND THE TESTIMONY THAT'S BEEN PRESENTED
6 TO YOU OVER THE LAST TEN DAYS AS TO WHETHER OR NOT THE CLAIMS
7 OF THE PATENT SUPPORT THE CLAIMS THAT DIGITAL REG IS NOW
8 MAKING IN THE LITIGATION.

9 LET'S START WITH THE FIRST QUESTION. THAT'S INFRINGEMENT.
10 '541 PATENT, AND THEN WE WILL GO TO THE '670 PATENT.

11 NOW, MR. ELLWANGER, WHEN HE WAS TALKING ABOUT INVALIDITY,
12 MENTIONED THE BURDEN OF PROOF. WHAT HE DIDN'T TALK ABOUT WAS
13 THE BURDEN OF PROOF ON INFRINGEMENT. ON INFRINGEMENT, DIGITAL
14 REG BEARS THE BURDEN OF PROOF. THEY MUST PROVE THAT ADOBE'S
15 PRODUCTS INFRINGE.

16 AND TO PROVE THAT ADOBE'S PRODUCTS INFRINGE, WHAT THE
17 COURT'S INSTRUCTION TELLS YOU IS THAT YOU NEED TO CONSIDER AND
18 COMPARE THE ADOBE PRODUCTS WITH THE REQUIREMENTS OF THE CLAIM.
19 AND IN ORDER FOR DIGITAL REG TO PROVE THAT THERE'S
20 INFRINGEMENT, THEY HAVE TO PROVE THAT EVERY REQUIREMENT OF THE
21 CLAIM IS MET.

22 NOW, THIS IS THE CLAIM. I KNOW YOU GUYS HAVE BECOME
23 INTIMATELY FAMILIAR WITH IT. AND YOU ARE PROBABLY EXCITED TO
24 FORGET ABOUT IT AFTER THIS WHOLE PROCEEDING, BUT BEFORE YOU
25 CAN FORGET ABOUT IT, I WOULD ASK YOU TO SPEND JUST A LITTLE

1 BIT MORE TIME THINKING HARD ABOUT IT.

2 HAVE THEY ACTUALLY PROVEN THAT THE CLAIM IS MET? NOW,
3 DURING MR. ELLWANGER'S CLOSING, HE PUT THE CLAIM UP, HE
4 POINTED TO IT, HE TALKED ABOUT HOW THERE'S ACCESS CHECKING,
5 AND ALL OF THAT, BUT WHAT HE DIDN'T TALK ABOUT ARE THE
6 ELEMENTS OF THE CLAIM THAT THEY HAVEN'T PROVEN. THE ONES THAT
7 WE HAVE BEEN FOCUSED ON FOR THE LAST TEN DAYS. THE THINGS
8 THAT HE OMITTED ARE THE THINGS THAT ARE AT THE VERY HEART OF
9 THE DISPUTE.

10 DURING THE OPENING, I TOLD YOU THAT THERE WERE GOING TO BE
11 TWO KEY ISSUES FOR YOU TO DECIDE ON THIS PATENT. AND I THINK
12 YOU CAN TELL FROM THE EVIDENCE, THAT THOSE ARE THE TWO KEY
13 ISSUES THAT ARE IN DISPUTE. YOU DIDN'T HEAR ANYTHING
14 SUBSTANTIVE FROM MR. ELLWANGER ON THOSE ISSUES. YOU DID NOT
15 HEAR ANY SUBSTANCE ON WHY THOSE TWO ELEMENTS ARE ACTUALLY MET
16 BY THE ADOBE PRODUCTS.

17 HE TOLD YOU TO FOCUS ON THE CODE AND THE DOCUMENTS. WE
18 DON'T DISAGREE WITH THAT. THE CODE AND THE DOCUMENTS ARE
19 IMPORTANT.

20 GUESS WHAT? THERE'S NO DISPUTE BETWEEN THE EXPERTS ON THE
21 CODE OR THE DOCUMENTS OR THE BASIC FUNCTIONING OF THE SYSTEM.

22 THE QUESTION THAT IS IN YOUR HANDS IS WHETHER OR NOT WHEN
23 YOU LOOK AT THE CODE, WHEN YOU LOOK AT THE DOCUMENTS, AND THEN
24 YOU ANALYZE IT THE WAY THAT DR. DEVANBU AND DR. WICKER WERE
25 SUPPOSED TO ANALYZE IT, WHETHER THOSE -- THAT CODE AND THOSE

CLOSING ARGUMENT - MEHTA

1 DOCUMENTS ACTUALLY MAP TO THE LIMITATIONS OF THE CLAIM.

2 AND THAT'S WHERE YOU HEARD NOTHING FROM MR. ELLWANGER. IN
3 FACT, HE'S GOING TO GET A CHANCE TO COME UP HERE AND TELL YOU
4 MORE ABOUT ALL OF THIS WHEN HE CLOSES IN REBUTTAL. LISTEN
5 CAREFULLY FOR ANY EVIDENCE FROM DR. DEVANBU THAT ADOBE MEETS
6 THESE REQUIREMENTS.

7 LISTEN CAREFULLY TO SEE IF HE CAN POINT YOU TO ANY
8 TESTIMONY TO THAT EFFECT. AS I'M GOING TO SHOW YOU IN JUST A
9 MINUTE, HE'S NOT GOING TO BE ABLE TO DO IT BECAUSE IT'S NOT
10 THERE.

11 SO LET'S TALK ABOUT THE FIRST REQUIREMENT. THE YES/NO
12 TOKEN. WE HAVE BEEN OVER THIS A LOT. BUT THINK BACK
13 CAREFULLY TO WHEN WE STARTED TALKING ABOUT THE YES/NO TOKEN
14 LAST WEEK.

15 AND WHEN WE STARTED TALKING ABOUT THE YES/NO TOKEN, THE
16 QUESTION WAS RAISED WITH DR. DEVANBU BY MR. DINOVO ON HIS
17 DIRECT EXAMINATION.

18 WHEN YOU WERE APPLYING THE COURT'S CLAIM CONSTRUCTION,
19 THAT MEANS WHEN YOU WERE MAKING THE DECISION AS TO WHETHER OR
20 NOT YOU THOUGHT ADOBE INFRINGED, WHEN YOU WERE FORMING YOUR
21 OPINION ON INFRINGEMENT, WERE YOU APPLYING A CONSTRUCTION THAT
22 HAD A YES/NO REQUIREMENT?

23 AND DR. DEVANBU SAID NO. HE DIDN'T CONSIDER THE YES/NO
24 REQUIREMENT.

25 AND THEN THE NEXT DAY, YOU HEARD FROM THE COURT. YOU

CLOSING ARGUMENT - MEHTA

1 HEARD FROM THE COURT THAT IN FACT, THE COURT'S CONSTRUCTION OF
2 TOKEN CONTAINS A YES/NO INDICATOR. IT REQUIRES A YES OR NO.
3 THE VERY THING THAT DR. DEVANBU SAID HE DIDN'T EVEN CONSIDER,
4 THE COURT MADE CLEAR WAS A REQUIREMENT OF THE CLAIMS.

5 NOW, WHAT THE COURT SAID IS, YOU HAVE TO DISREGARD ANY
6 TESTIMONY THAT THAT'S NOT A REQUIREMENT. AND YOU WILL SEE IN
7 YOUR JURY INSTRUCTIONS THAT THE COURT'S INSTRUCTION OF THE
8 TERM "TOKEN" REQUIRES A YES/NO INDICATOR.

9 NOT SURPRISINGLY SINCE HE DIDN'T EVEN CONSIDER THE
10 REQUIREMENT, DR. DEVANBU HAS NO EVIDENCE THAT THAT INDICATOR
11 IS REQUIRED.

12 DR. WICKER DID CONSIDER THE REQUIREMENT. AND WHEN HE
13 CONSIDERED THE REQUIREMENT, HE EXPLAINED IN DETAIL OVER THE
14 COURSE OF HIS EXAMINATION THAT THE REQUIREMENT IS NOT MET.
15 IT'S NOT MET.

16 SO WE HAVE DR. WICKER SAYING, LOOK, IT'S NOT THERE, AND
17 DR. DEVANBU, WHO IS THEIR EXPERT ON AN ISSUE THAT THEY BEAR
18 THE BURDEN OF PROOF ON, SAYING HE DIDN'T EVEN CONSIDER IT.

19 AS I TOLD YOU WE WOULD PROVE IN THE OPENING, ADOBE DOESN'T
20 HAVE A YES/NO INDICATOR AS REQUIRED BY THE CLAIMS.

21 LET'S TALK ABOUT THE SECOND LIMITATION OF THE '541. THE
22 SECOND ISSUE, THE KEY ISSUE IN DISPUTE, AND THIS IS A SECOND
23 INDEPENDENT GROUND FOR NONINFRINGEMENT. SO ONE INDEPENDENT
24 GROUND FOR NONINFRINGEMENT IS THAT THERE'S NO YES/NO INDICATOR
25 AND THEY HAVEN'T EVEN PROVIDED ANY EVIDENCE THAT THERE IS.

1 A SECOND ISSUE THAT WE TEE'D UP DURING THE OPENING AND HAS
2 BEEN A FOCUS OF THE TESTIMONY, COMPLETELY INDEPENDENT IS THERE
3 IS NO PERMISSION THAT'S GENERATED AT THE CLIENT. WE'VE HEARD
4 A LOT ABOUT GENERATING AT THE CLIENT, GENERATING AT THE
5 SERVER.

6 WELL, WHAT THE CLAIM SAYS, THE CLAIM SAYS, AND THIS IS THE
7 KEY THING THEY HAVE TO PROVE, THAT THE PERMISSION IS GENERATED
8 AT THE CLIENT. AND THE COURT'S CLAIM CONSTRUCTION MAKES CLEAR
9 THAT THE INSTALLATION PROGRAM CREATES THE PERMISSION LOCALLY.

10 WHEN YOU GO BACK AND LOOK AT THE JURY INSTRUCTIONS, READ
11 THAT INSTRUCTION. IT MAKES CLEAR THAT THE PERMISSION HAS TO
12 BE CREATED LOCALLY; THAT'S AT THE CLIENT, NOT AT THE SERVER.

13 WELL, THIS ISN'T JUST AN INSUBSTANTIAL THING. IT'S NOT
14 JUST A LITTLE THING THAT WE CAN HAVE WAVE OUR HANDS AND
15 PRETEND ISN'T IMPORTANT. AS WE SHOWED THROUGHOUT THE LAST TWO
16 WEEKS, THIS IS A KEY ELEMENT OF THE CLAIMS.

17 YOU DON'T GET TO JUST PUT A BOARD UP THERE AND SAY, WELL,
18 IT'S HERE, WITHOUT ACTUALLY PROVING THAT IT'S THERE BECAUSE
19 THIS WAS IMPORTANT. THIS WAS IMPORTANT BECAUSE WHEN DIGITAL
20 REG GOT THE PATENTS, THEY TOLD THE PATENT OFFICE THAT THE
21 THING THAT MAKES THEM DIFFERENT OVER THE PRIOR ART -- THAT'S
22 THE WOLFE PATENT, YOU HAVE THAT IN THE JURY ROOM, IT'S EXHIBIT
23 679 -- THE THING THAT MAKES THEM DIFFERENT OVER THE WOLFE
24 PATENT AND ALL THIS OTHER PRIOR ART IS THAT THEY ARE
25 GENERATING THE PERMISSION AT THE CLIENT AND NOT AT THE CENTRAL

1 COMPUTER.

2 AND DR. WICKER EXPLAINED, WHEN HE REVIEWED THE FILE
3 HISTORY, WHEN HE LOOKED AT THE EVIDENCE, WHAT IT SHOWS IS THAT
4 THE PERMISSION IS GENERATED LOCALLY, NOT AT THE SERVER. THE
5 CLAIM SAYS IT, THE COURT'S CLAIM CONSTRUCTION SAID IT, AND
6 DIGITAL REG SAID IT WHEN THEY GOT THE PATENT.

7 BUT THAT'S NOT WHERE THE EVIDENCE STOPS. MR. PATTERSON
8 HIMSELF WAS DESCRIBING HIS CLIENT CENTRIC APPROACH, AND HE
9 SAID, LOOK, THE CONTROLLING PROCESS FOR PROTECTING THE
10 CONTENT, THAT'S PERFORMED AT THE CLIENT, NOT AT THE SERVER.

11 AND MR. VENTERS, AND WE ARE GOING TO HEAR MORE ABOUT
12 MR. VENTERS LATER, BUT THAT ADOBE VALUE PROPOSITION DOCUMENT
13 THAT HE SAYS HE SENT TO ADOBE? WHETHER HE SENT IT OR NOT, THE
14 THING HE CLAIMS HE SENT TO ADOBE HIGHLIGHTED THE CLIENT
15 CENTRIC ASPECT OF THE INVENTION.

16 IN FACT, WHEN HE SAYS HE WAS TELLING ADOBE ABOUT THE
17 INVENTION, WHAT HE WAS TELLING THEM WAS, WE ARE CLIENT CENTRIC
18 AND WE STAND IN CONTRAST TO PEOPLE THAT ARE DOING IT AT THE
19 SERVER, AND THAT'S AN IMPORTANT COMPONENT OF OUR INVENTION.
20 CLIENT CENTRIC GENERATED AT THE CLIENT, GENERATED LOCALLY.

21 YOU'VE SEEN THESE ANIMATIONS BEFORE SO WE ARE NOT GOING TO
22 RUN THROUGH THE WHOLE THING. BUT I JUST WANT TO REMIND YOU OF
23 SOMETHING.

24 REMEMBER DR. WICKER'S TESTIMONY. AND REMEMBER HOW HE
25 SHOWED YOU HOW THE DIGITAL REG PATENTS WORK AND HOW THOSE

CLOSING ARGUMENT - MEHTA

1 GEARS THAT REFLECT THE GENERATING OF THE PERMISSION, THE SAME
2 GEAR THAT DR. KELLER USED TO SHOW PERMISSION GENERATION, THOSE
3 GEARS IN THE PATENT, THEY ARE AT THE CLIENT BECAUSE IT'S
4 CLIENT CENTRIC.

5 AND IN THE ADOBE PRODUCTS, THOSE GEARS, THE PROCESS OF
6 GENERATING THE THING THAT THEY CLAIM IS THE PERMISSION, THOSE
7 ARE AT THE SERVER. THEY ARE NOT AT THE CLIENT.

8 THEY ARE EXACTLY STANDING IN CONTRAST TO THE CLIENT
9 CENTRIC APPROACH IN JUST THE WAY MR. VENTERS WAS TRYING TO
10 SHOW THAT DISTINCTION.

11 SO WHAT'S THE EVIDENCE? THE EVIDENCE IS, AND, AGAIN,
12 NEITHER EXPERT DISPUTES HOW THE PRODUCT WORKS IN TERMS OF THE
13 RELEVANT FUNCTIONALITY. THEY DON'T DISPUTE THE CODE OR THE
14 DOCUMENTS. WHAT THEY DISPUTE IS THE APPLICATION OF THE CLAIM
15 AND THE CLAIM CONSTRUCTION.

16 AND WHAT DR. WICKER SAYS IS, LOOK, FOR ALL THREE OF THE
17 ADOBE PRODUCTS, THE KEY, THE THING THAT'S BEING POINTED TO AS
18 THE PERMISSION GENERATED AT THE SERVER AND THEN IT'S PASSED TO
19 THE CLIENT.

20 WELL, GUESS WHAT? YOU HEARD DR. DEVANBU, ALTHOUGH HE
21 DIDN'T ADMIT IT ON DIRECT EXAMINATION, AND HE TRIED TO SUGGEST
22 THAT THERE WAS SOME GENERATION HAPPENING AT THE CLIENT, ON
23 CROSS-EXAMINATION WHEN WE PUT THE QUESTIONS TO HIM, AND I
24 ASKED HIM POINT BLANK, WHERE THE GENERATION'S HAPPENING? HE
25 EXPLAINED FOR ALL THREE OF THE PRODUCTS, THE GENERATING IS

CLOSING ARGUMENT - MEHTA

1 HAPPENING AT THE SERVER, AND THEN THE THING THAT HE IS
2 POINTING TO IS THE PERMISSION IS BEING PASSED TO THE CLIENT.

3 LET'S LOOK AT HIS TESTIMONY. FOR THE ACTIVATION PRODUCT,
4 HE'S POINTING TO THE E-LICENSE AS THE PERMISSION.

5 AND I SAID, THAT'S GENERATED AT THE SERVER.

6 CORRECT.

7 AND IT'S JUST PASSED TO THE CLIENT?

8 CORRECT.

9 FLASH ACCESS: THE CEK, THE KEY THAT HE'S POINTING TO AS
10 THE PERMISSION, THAT EXISTS AT THE SERVER BEFORE IT GOES TO
11 THE CLIENT. IT WAS GENERATED AT THE SERVER.

12 AND FOR LIVECYCLE RIGHTS MANAGEMENT: THE ENCRYPTED KEY
13 THAT HE'S POINTING TO IS THE PERMISSION.

14 GUESS WHAT? THAT ALSO EXISTED AT THE SERVER AND WAS
15 GENERATED THERE BEFORE IT WAS PASSED TO THE CLIENT.

16 SO FOR ALL THREE PRODUCTS, HE ADMITTED POINT BLANK THAT
17 HIS CODE REVIEW, HIS REVIEW OF THE DOCUMENTS, AND HIS REVIEW
18 OF THE DEPOSITION TESTIMONY CONFIRMS EXACTLY WHAT DR. WICKER
19 WAS SAYING. IT'S DONE AT THE SERVER AND NOT AT THE CLIENT.
20 THIS IS NOT CLIENT CENTRIC. IT DOESN'T FALL WITHIN THE SCOPE
21 OF THE CLAIMS.

22 SO, YOU WOULD THINK, GIVEN THOSE ADMISSIONS, THAT YOU
23 SHOULDN'T ALL BE HERE STILL. SO HOW DO THEY CONTINUE TO URGE
24 YOU TO FIND INFRINGEMENT NOTWITHSTANDING THE ADMISSIONS OF
25 THEIR OWN EXPERT? HOW CAN THEY DO IT?

CLOSING ARGUMENT - MEHTA

1 WELL, THEY CAME UP WITH A THEORY. AND THE THEORY IS THAT,
2 YES, IT EXISTED AT THE CLIENT -- SORRY. IT EXISTED AT THE
3 SERVER AND WAS GENERATED THERE, AND GOT PASSED TO THE CLIENT,
4 BUT WE'RE GOING TO ENCRYPT IT BEFORE WE PASS IT. AND THAT THE
5 PROCESS OF ENCRYPTING IT AND SENDING IT OVER AND THEN
6 DECRYPTING IT MEANS YOU ARE SOMEHOW REGENERATING IT OR
7 RE-CREATING IT AT THE CLIENT.

8 WELL, WE PROBED THAT A LITTLE BIT ON CROSS-EXAMINATION
9 WITH DR. DEVANBU. AND WHAT DR. DEVANBU ADMITTED WAS,
10 ENCRYPTION AND DECRYPTION ASIDE -- I AM GOING TO TALK ABOUT
11 THAT IN A SECOND -- THE KEY, THE THING THAT THEY POINT TO AS
12 THE PERMISSION, IT WAS GENERATED AT THE CLIENT AND IT EXISTED
13 THERE. AND THE EXACT SAME THING IS WHAT'S BEING USED AT
14 THE -- I'M SORRY, I MISSPOKE. IT WAS GENERATED AT THE SERVER
15 AND EXISTED THERE, AND THE EXACT SAME THING IS BEING USED AT
16 THE CLIENT.

17 SO, WHAT DOES THE ARGUMENT BOIL DOWN TO? THE ARGUMENT
18 BOILS DOWN TO AN ARGUMENT THAT IF YOU ENCRYPT SOMETHING AND
19 THEN DECRYPT IT, YOU'VE RE-CREATED IT. THINK ABOUT WHAT THAT
20 MEANS. YOU'VE ALL BOUGHT THINGS ONLINE, SHOPPED ONLINE AND
21 YOU HAVE PUT YOUR CREDIT CARD INFORMATION ON TO A WEB PAGE.

22 AND GUESS WHAT HAPPENS TO YOUR CREDIT CARD INFORMATION
23 BEFORE IT GOES TO AMAZON? IT GETS ENCRYPTED. AND THEN AMAZON
24 DECRYPTS IT AND CHARGES YOUR CREDIT CARD. AMAZON IS NOT
25 RE-CREATING OR REGENERATING YOUR CREDIT CARD. ALL THAT WAS

CLOSING ARGUMENT - MEHTA

1 DONE WAS YOU PUT A LEVEL OF PROTECTION ON IT, YOU PACKAGE IT
2 UP SO IT CAN BE SENT OVER, AND THEN THE VERY SAME THING THAT
3 YOU PACKAGED UP, JUST GETS UNWRAPPED ON THE OTHER SIDE.

4 DR. WICKER EXPLAINED THAT TO YOU. HE EXPLAINED IN DETAIL
5 THAT IT'S THE SAME KEY THAT'S GENERATED AT THE SERVER, THE
6 EXACT SAME KEY THAT'S BEING USED AT THE CLIENT. AND
7 ENCRYPTION AND DECRYPTION AREN'T CHANGING THE KEY, THEY'RE
8 JUST PACKAGING IT UP SO IT CAN BE TRANSMITTED, THE SAME WAY
9 ANY DATA HAS TO BE PACKAGED BEFORE YOU CAN TRANSFER IT OVER A
10 NETWORK.

11 SO AFTER ALL OF THAT, AND CONSIDERING ALL OF THAT, WE
12 WOULD ASK YOU TO GO BACK AND THINK HARD ABOUT THESE TWO
13 QUESTIONS AND FIND THAT FOR THESE TWO INDEPENDENT REASONS AND
14 FOR OTHER REASONS THAT YOU HEARD ABOUT OVER THE COURSE OF THE
15 LAST TEN DAYS THAT I AM NOT GOING TO GET INTO TODAY, THAT
16 ADOBE DOES NOT INFRINGE THE '541 PATENT. DIGITAL REG HAS NOT
17 PROVED, THEY HAVE NOT MET THEIR BURDEN OF PROVING THAT THE
18 PRODUCTS WORK THE SAME WAY.

19 NOW -- OR THE PRODUCTS WORK THE SAME WAY AS THE CLAIMS, I
20 SHOULD SAY.

21 NOW, WITH RESPECT TO THE '670 PATENT, AGAIN, THEY BEAR THE
22 BURDEN OF PROOF AND THEY HAVE TO PROVE THAT EVERY REQUIREMENT
23 IS MET.

24 AND IN THE '670 PATENT, WE HEARD ABOUT CLAIM 45 AND A
25 BUNCH OF DIFFERENT REQUIREMENTS, BUT I'M GOING TO FOCUS IN ON

CLOSING ARGUMENT - MEHTA

1 TWO OF THEM. THE TWO REQUIREMENTS THAT I WANT TO FOCUS IN ON
2 ARE THE REQUIREMENT THAT YOU DENY ACCESS UNTIL THE
3 TRANSMISSION OF NOTIFICATION INFORMATION AND THEN SUCCESSIVE
4 RECIPIENT.

5 SO, DENYING ACCESS UNTIL THE NOTIFICATION INFORMATION IS
6 SENT. THIS IS SOMETHING THAT'S DESCRIBED IN THE PATENT. WE
7 HEARD TESTIMONY ABOUT HOW IT IS DESCRIBED IN THE PATENT AND WE
8 ALSO HEARD TESTIMONY ABOUT HOW IT WAS DESCRIBED IN THE FILE
9 HISTORY.

10 AND MUCH THE SAME WAY AS THE WOLFE PATENT, WHEN THE
11 PATENTEE WAS TRYING TO GET THE '670 PATENT, THERE WAS A
12 DISCUSSION ABOUT ALL THE PRIOR ART THAT WAS OUT THERE AND WHAT
13 MIGHT MAKE CLAIM 45 DIFFERENT. AND, AGAIN, WHAT THEY SAID
14 WAS, WHAT MAKES US DIFFERENT IS THAT THE DENIAL OF ACCESS IS
15 UP UNTIL THE POINT WHERE YOU SEND THE NOTIFICATION INFORMATION
16 OUT. AND THEN THE GRANTING OF ACCESS IS TRIGGERED BY THE
17 SENDING OUT OF THE NOTIFICATION INFORMATION.

18 AND WHAT THEY SAID WAS, THAT'S WHAT MAKES US DIFFERENT
19 FROM THE PRIOR ART. BECAUSE IN THE PRIOR ART, YOU SEND STUFF
20 OUT, BUT YOU HAVE TO GET SOMETHING BACK BEFORE YOU CAN HAVE
21 ACCESS. SO OUR PATENT IS DIFFERENT BECAUSE WE ONLY SEND IT
22 OUT AND WE DON'T GET ANYTHING BACK. THAT WAS WHY THEY SAID
23 THEY WERE DIFFERENT FROM THE PRIOR ART.

24 AS DR. WICKER PUT IT, IT'S NOT THE SUCCESSFUL TRANSMISSION
25 THAT DETERMINES WHETHER YOU HAVE ACCESS, IT'S GETTING THE KEY,

1 IT'S GETTING SOMETHING BACK FROM THE SERVER.

2 SO WHAT'S EVIDENCE -- AND MR. HERBACH OBVIOUSLY CONFIRMED
3 THIS.

4 WHAT'S THE EVIDENCE? WELL, ONCE AGAIN, AND NOT
5 SURPRISINGLY GIVEN THE EXPERTS AGREE ON THE CODE AND THE
6 DOCUMENTS AND HOW THE PRODUCTS WORK BASICALLY, DR. DEVANBU WAS
7 ASKED TO CONSIDER THIS ON DIRECT EXAMINATION. AND HE SAID,
8 OH, YES, THE LIMITATIONS MET.

9 BUT ON CROSS-EXAMINATION HE CONFIRMED THAT IN THE ACCUSED
10 PRODUCTS, THE ACCESS, THE THING THAT TRIGGERS THE ACCESS IS
11 NOT THE SENDING OUT OF INFORMATION, IT'S GETTING THAT KEY
12 BACK. IT'S GETTING SOMETHING BACK FROM THE SERVER.

13 SO, AGAIN, IN STARK CONTRAST TO WHAT'S CLAIMED IN THE
14 CLAIMS.

15 AND WHAT HE SAID WAS, YOU HAVE TO GET SOMETHING BACK. SO
16 FOR ALM, TOO, YOU DON'T HAVE ACCESS UNTIL YOU GET THAT LICENSE
17 E-LICENSE BACK.

18 AND THEN MR. KELLER, THE EXPERT ON INVALIDITY. MR. KELLER
19 EXPLAINED THAT FROM HIS PERSPECTIVE, IF YOU ACCESS THE
20 TRIGGERING EVENT IS BASED ON GETTING SOMETHING BACK THE WAY IT
21 WORKS IN THE ADOBE PRODUCTS, THAT WOULDN'T FIT HIS
22 UNDERSTANDING OF THE CLAIMS.

23 SO, ACTUALLY, ALL THREE OF THE EXPERTS AGREE. THEY ALL
24 AGREE. THE CLAIMS REQUIRE THAT YOU SEND SOMETHING OUT TO GET
25 ACCESS, AND THEN DR. DEVANBU AND DR. WICKER AGREE THAT YOU

1 HAVE TO GET SOMETHING BACK.

2 SO THAT LIMITATION OF THE '670 IS NOT MET.

3 THERE'S A SECOND INDEPENDENT GROUND FOR NONINFRINGEMENT,
4 AND THAT'S THE SUCCESSIVE RECIPIENT LIMITATION THAT'S IN THE
5 CLAIMS. THERE'S OTHERS, BUT I'M ONLY GOING TO GIVE YOU THE
6 TOP TWO, THE HIGHLIGHTS.

7 SUCCESSIVE RECIPIENT. WHAT THE PATENT CLAIMS IS SOMEBODY
8 CREATES CONTENT AND THEN THEY SEND IT TO A USER. AND THEN
9 THAT USER SENDS IT TO ANOTHER RECIPIENT. SO YOU HAVE A FIRST
10 RECIPIENT AND YOU HAVE A SUCCESSIVE RECIPIENT.

11 AND WHAT THE COURT HAS CONSTRUED THOSE TERMS TO MEAN IS,
12 THE USER THAT RECEIVES THE CONTENT AND THEN THE USER THAT
13 RECEIVES IT FROM A PREVIOUS RECIPIENT. YOU WILL SEE THAT IN
14 THE JURY INSTRUCTIONS.

15 WELL, YOU HEARD DR. DEVANBU EXPLAIN HIS INFRINGEMENT
16 THEORY FOR ACTIVATION. AND WHAT HE SAID WAS, LOOK -- AND THIS
17 IS DR. WICKER'S ILLUSTRATIVE TO SHOW HOW THE SYSTEM WORKS, BUT
18 THERE'S NO REAL CONTEST ON HOW THE PRODUCT WORKS. YOU
19 DOWNLOAD SOFTWARE, ONE PERSON DOWNLOADS IT, ANOTHER PERSON
20 DOWNLOADS IT, ANOTHER PERSON DOWNLOADS IT.

21 DR. DEVANBU ADMITTED THAT HE'S NOT AWARE OF ANY INSTANCE
22 IN WHICH ANYONE HAS ACTUALLY EVER TAKEN THAT DOWNLOADED
23 SOFTWARE ON THEIR LAPTOP AND PUT IN ON A THUMB DRIVE OR SENT
24 IT IN AN EMAIL TO SOMEBODY ELSE. HE HASN'T COME FORWARD WITH
25 ANY EVIDENCE, AND YOU HAVEN'T HEARD ANY EVIDENCE FROM DIGITAL

CLOSING ARGUMENT - MEHTA

1 REG THAT THAT'S NEVER HAPPENED. THERE IS NO EVIDENCE OF A
2 SUCCESSIVE RECIPIENT FOR THE ACTIVATION PRODUCTS. IT'S JUST
3 NOT THERE.

4 SO THAT LIMITATION IS NOT MET.

5 SO WHEN YOU GO BACK INTO THE JURY ROOM, I WOULD ASK YOU TO
6 CAREFULLY CONSIDER THE CLAIM REQUIREMENTS. AND NOT THE CLAIM
7 REQUIREMENTS THAT WERE NOT FOCUSED ON, AS MR. ELLWANGER WAS
8 DOING DURING HIS CLOSING, BUT THE CLAIM REQUIREMENTS THAT WE
9 HAVE FOCUSED ON, THE ONES THAT HAVE BEEN AT THE HEART OF THE
10 TESTIMONY FOR THE LAST TEN DAYS.

11 AND I THINK WHAT YOU'LL FIND IS, THERE'S ACTUALLY
12 REMARKABLE CONSISTENCY BETWEEN DR. DEVANBU AND DR. WICKER ON
13 HOW THE PRODUCTS ACTUALLY WORK. THERE'S JUST ARGUMENT THAT'S
14 LAYERED ON TOP OF THAT FROM DIGITAL REG THAT SOMEHOW THAT CAN
15 MAP TO THE CLAIMS.

16 AND WE ASK YOU TO THINK REALLY HARD ABOUT WHETHER THAT
17 ARGUMENT WORKS, AND WHETHER IT ACTUALLY COMPORTS WITH THE
18 CLAIM LANGUAGE AND WITH WHAT'S REQUIRED UNDER THE COURT'S
19 CLAIM CONSTRUCTIONS.

20 THERE'S ONE BRIEF SIDE NOTE THAT I WANT TO TAKE YOU ON
21 INFRINGEMENT, WHICH IS WE TALKED A BIT ABOUT DIRECT
22 INFRINGEMENT AND THE COURT INSTRUCTED YOU ON DIRECT
23 INFRINGEMENT.

24 THE COURT ALSO INSTRUCTED YOU ON INDIRECT INFRINGEMENT.
25 WHEN YOU GO BACK TO THE JURY ROOM AND YOU CONSIDER INDIRECT

1 INFRINGEMENT, WHAT YOU'RE BEING ASKED TO CONSIDER IS, EVEN IF
2 ADOBE'S NOT INFRINGING, ARE WE GOING TO HOLD ADOBE LIABLE FOR
3 THE INFRINGEMENT OF OTHERS.

4 FIRST, IN ORDER TO HOLD ADOBE LIABLE FOR THE INFRINGEMENT
5 OF OTHERS, YOU HAVE TO FIND THAT SOMEONE IS INFRINGING. SO,
6 IF YOU LOOK AT THOSE EXPLANATIONS FOR WHY WE ARE DIFFERENT
7 THAN THE CLAIMS, YOU WOULD FIND THAT NOBODY IS INFRINGING
8 BECAUSE OUR PRODUCTS ARE DIFFERENT, SO THERE CAN'T BE ANY
9 DIRECT INFRINGEMENT, SO THERE CAN'T BE ANY INDIRECT
10 INFRINGEMENT.

11 BUT IF YOU GET BEYOND THAT POINT, THEN YOU HAVE TO ASK
12 YOURSELF, WHAT DOES IT TAKE TO HOLD ADOBE LIABLE FOR THE
13 ACTIONS OF SOMEONE ELSE? AND THE COURT'S INSTRUCTIONS ON THAT
14 ARE CLEAR. YOU HAVE TO FIND NOT ONLY THAT THE PRODUCTS
15 INFRINGE AND THAT SOMEONE ELSE IS ACTUALLY USING THEM IN AN
16 INFRINGING WAY, BUT ALSO THAT ADOBE INTENTIONALLY TOOK ACTIONS
17 THAT INDUCED THAT INFRINGEMENT BY THE INDIVIDUALS OR THE
18 COMPANIES THAT YOU FIND TO HAVE BEEN INFRINGING, THAT IT WAS
19 AWARE OF THE PATENT, THAT IT KNEW THE ACTS IT WAS CAUSING
20 WOULD BE INFRINGING, AND THAT IT DIDN'T HAVE A GOOD FAITH
21 BELIEF THAT THE PATENTS WERE INVALID.

22 AND I'M NOT GOING TO GET INTO ALL OF THIS NOW BECAUSE
23 MR. REINES IS GOING TO TALK ABOUT THIS A LOT LATER IN HIS
24 PRESENTATION, ABOUT THE TIME LINE AND ABOUT WHAT REALLY
25 HAPPENED AND WHAT THE EVIDENCE REALLY SHOWS, BUT WHEN YOU HEAR

1 THAT EVIDENCE ON THEIR ALLEGATION THAT ADOBE WAS WILLFUL, I
2 WANT YOU TO CONSIDER THAT SAME EVIDENCE ON INDIRECT
3 INFRINGEMENT.

4 BECAUSE ON INDIRECT INFRINGEMENT, THEY HAVE TO PROVE THAT
5 ADOBE WAS DOING THIS INTENTIONALLY. THAT'S THE COURT'S CLAIM
6 CONSTRUCTION. AND WE WOULD SUBMIT THAT THE EVIDENCE THAT
7 SHOWS THAT ADOBE WAS NOT WILLFUL ALSO CONFIRMS THAT EVEN IF
8 YOU WERE TO FIND INFRINGEMENT, WHICH WE DON'T THINK YOU CAN
9 FIND ON THIS RECORD, IT WAS NOT INTENTIONAL AND, THEREFORE,
10 THERE CAN BE NO INDIRECT INFRINGEMENT.

11 LET'S GO TO QUESTION 2, INVALIDITY. SO, YOU'LL READ THE
12 JURY INSTRUCTIONS ON OBVIOUSNESS. THE KEY THING THAT I WOULD
13 ASK YOU TO CONSIDER WHEN YOU'RE CONSIDERING OBVIOUSNESS, AND
14 THE KEY ISSUE THAT YOU HAVE TO TAKE BACK FOR YOURSELVES IS,
15 DR. WICKER IS NOT CONTENDING THAT THE SCHULL '070 PATENT IS
16 IDENTICAL TO THE CLAIMS OF THE PATENT BECAUSE THE VERY
17 DIFFERENCES THAT MAKE THE ADOBE PRODUCTS NONINFRINGEMENT, ALSO
18 APPLY TO THE SCHULL PATENT. BUT THERE'S A DIFFERENT INQUIRY
19 FOR INVALIDITY.

20 SO EVEN WHEN YOU FIND THAT THE ADOBE PRODUCTS ARE
21 DIFFERENT AND THAT EVERY REQUIREMENT OF THE CLAIMS IS NOT
22 PRESENT IDENTICALLY IN THE ADOBE PRODUCTS, YOU HAVE A
23 DIFFERENT ANALYSIS THAT YOU NEED TO DO FOR INVALIDITY.

24 AND THAT ANALYSIS IS, EVEN IF SCHULL IS DIFFERENT FROM THE
25 PATENTS FOR THE SAME REASONS THAT ADOBE IS, IN THE CONTEXT OF

1 INVALIDITY, WOULD IT BE OBVIOUS TO CHANGE SCHULL BACK IN THE
2 DAY TO MAKE IT WORK LIKE THE CLAIMS.

3 NOW, YOU MAY BE THINKING TO YOURSELVES, OKAY, WELL, LET'S
4 SAY WE FIND AS A GROUP THAT THERE'S NO INFRINGEMENT, WE CAN
5 JUST GO HOME, WE DON'T HAVE TO WORRY ABOUT INVALIDITY.
6 INVALIDITY IS IMPORTANT IN THIS CASE. EVEN IF YOU FIND THAT
7 ADOBE DOESN'T INFRINGE, WHICH WE THINK THE EVIDENCE WILL
8 COMPEL YOU TO DO, WE'D ASK YOU TO REALLY TAKE A HARD LOOK AT
9 THE INVALIDITY QUESTION. AND THERE'S A REASON FOR THAT.

10 YOU HEARD TESTIMONY THAT DIGITAL REG COULD SUE ADOBE AGAIN
11 TOMORROW ON DIFFERENT PRODUCTS. AND DIGITAL REG COULD GO TO
12 ANOTHER SOFTWARE COMPANY AND ANOTHER SOFTWARE COMPANY AND
13 ANOTHER SOFTWARE COMPANY AND ASK FOR THEM TO ENTER INTO
14 SETTLEMENTS.

15 IS IT RIGHT TO LET DIGITAL REG DO THAT IF THE PATENTS
16 AREN'T VALID? WELL YOU HAVE THAT QUESTION BEFORE YOU NOW.
17 ARE THE PATENTS VALID? AND WE WOULD ASK THAT YOU FIND THAT
18 THEY AREN'T.

19 SO, BEFORE WE DO THAT, LET'S TALK ABOUT WHAT DIGITAL REG
20 AGREES THEY DIDN'T INVENT. THEY AGREED THEY DID NOT INVENT
21 DRM. DR. DEVANBU ADMITTED THAT. DR. KELLER ADMITTED THAT.
22 DID NOT INVENT DRM.

23 YOU HEARD LOTS OF TESTIMONY ABOUT SUGGESTIONS THAT DRM IS
24 CRITICAL AND VERY VALUABLE AND PEOPLE REALLY WANT IT. LET'S
25 BE CLEAR ABOUT SOMETHING. MR. PATTERSON DID NOT INVENT DRM.

CLOSING ARGUMENT - MEHTA

1 AND NOBODY, NONE OF THEIR EXPERTS ARE SAYING THAT HE DID.

2 THIS WAS A CROWDED FIELD WITH LOTS OF PEOPLE WORKING IN THE
3 SPACE.

4 SO YOU HAVE TO ASK YOURSELF, THESE SPECIFIC CLAIMS, THE
5 SPECIFIC CLAIMS THAT HE SAYS HE INVENTED, WHAT'S ACTUALLY NEW
6 ABOUT THEM? WHAT MAKES THEM NOVEL? OR WHAT MAKES THEM NOT
7 OBVIOUS?

8 WELL, WE ASKED MR. KELLER, DR. KELLER IF SOME OF THESE
9 CONCEPTS WERE OUT THERE. AND HE SAID, YES, THESE CONCEPTS
10 WERE OUT THERE.

11 YOU HEARD YESTERDAY -- I ASKED HIM A WHOLE SERIES OF
12 CONTENTS FOR THE PATENT CLAIMS, AND WHETHER THEY WERE KNOWN IN
13 THE ART, AND HE SAID, YES, THAT WAS KNOWN, AND THAT WAS KNOWN,
14 AND THAT WAS KNOWN.

15 SO THEN WE WENT TO THE SOURCE OF THE PATENTS THEMSELVES.
16 AND WE ASKED MR. PATTERSON, WHAT'S NOVEL OR INNOVATIVE ABOUT
17 YOUR PATENTS? AND HE COULDN'T TELL YOU.

18 MR. ELLWANGER MADE A LOT OF REFERENCES DURING HIS CLOSING
19 TO MR. PATTERSON AND JULIAN LENNON AND PROTECTING COPYRIGHTED
20 MATERIAL, AND ALL OF THAT.

21 WELL, YOU HEARD FROM DR. SCHULL, PROFESSOR SCHULL. HE WAS
22 DOING THE EXACT SAME THING BEFORE MR. PATTERSON. HE CAME UP
23 WITH THIS SOFTWARE PROGRAM IN HIS LAB, AND HE WANTED TO
24 PROTECT THAT COPYRIGHTED CONTENT SO HE COULD DISTRIBUTE IT
25 FREELY. HE WAS DOING THE EXACT SAME THING.

1 AND MR. PATTERSON GOT UP THERE AND HE TRIED TO TELL YOU
2 ABOUT HIS WORK PAPERS, THAT HE COULDN'T REMEMBER A YEAR AGO IN
3 DEPOSITION, BUT SUDDENLY REMEMBERED NOW. BUT AFTER ALL OF
4 THAT, HE NEVER TOLD YOU WHAT WAS ACTUALLY NEW. DIGITAL REG
5 HAS NEVER TOLD YOU WHAT THEY SAY IS ACTUALLY NEW.

6 AND YOU HEARD FROM DR. SCHULL HIMSELF THAT WHAT THEY ARE
7 NOW SAYING WAS THE IDEA OF THIS PROTECTION OF COPYRIGHTED
8 MATERIAL, IT WASN'T NEW, HE HAD ALREADY COME UP WITH IT.

9 SO LET'S TALK ABOUT DR. SCHULL AND THE SOFTLOCK SYSTEM FOR
10 A SECOND. WE SHOWED YOU THE PATENT, AND THEN YOU HEARD
11 EXTENSIVE TESTIMONY FROM DR. SCHULL ABOUT THE PROCESS THAT HE
12 WENT THROUGH TO COME UP WITH THE IDEA AND THEN START TO WORK
13 ON THE COMPANY AND INNOVATE AND MAKE IT INTO A PRODUCT.

14 AND WHAT HE TOLD YOU WAS, THAT HE HAD THE SAME IDEA, THE
15 SAME MAGIC OF BEING ABLE TO DISTRIBUTE CONTENT FROM THE SERVER
16 AND THEN HAVE IT PASS FROM PERSON TO PERSON BACK IN 1992,
17 YEARS BEFORE MR. PATTERSON EVEN CLAIMS THAT HE THOUGHT OF THE
18 IDEA.

19 IN FACT, WHAT HE TOLD YOU WAS, THAT HE GOT THIS PATENT IN
20 1992. AND IF YOU LOOK AT THE TIME LINE -- I ASKED MR. KELLER,
21 DO YOU HAVE ANY REASON TO QUIBBLE WITH THAT DATE? AND
22 MR. KELLER SAID NO. THERE'S NO DISPUTE THAT MR. SCHULL'S --
23 DR. SCHULL'S PATENT AND THE SOFTLOCK SYSTEM THAT HE DEVELOPED
24 BASED ON THAT PATENT THAT HE THOUGHT OF THOSE IDEAS BACK IN
25 1992, YEARS BEFORE DIGITAL REG'S FILING. YEARS BEFORE.

1 THERE'S NO DISPUTE ABOUT THAT.

2 SO THEN YOU HAVE TO ASK YOURSELVES, IF DR. SCHULL HAS BEEN
3 DOING THIS AND HE HAD ALREADY HAD GOTTN THE PATENT BEFORE
4 MR. PATTERSON, WELL THEN HOW COME MR. PATTERSON HAVE GOTTN
5 HIS PATENT? THERE MUST BE SOMETHING NEW THERE, RIGHT? THE
6 PATENT OFFICE JUST DOESN'T GIVE YOU A PATENT IF SOMEBODY ELSE
7 HAS ALREADY DONE IT.

8 WELL, REMEMBER WHAT I TOLD YOU DURING THE OPENING. YOU
9 NINE ARE THE FIRST PEOPLE TO EVER CONSIDER THE QUESTION OF
10 WHETHER OR NOT MR. PATTERSON'S PATENTS ARE VALID OVER
11 DR. SCHULL'S WORK.

12 DR. SCHULL'S PATENT WAS NOT CONSIDERED BY THE PATENT
13 OFFICE WHEN IT GRANTED THE '541 PATENT AND IT WAS NOT
14 CONSIDERED BY THE PATENT OFFICE WHEN IT GRANTED THE '670
15 PATENT.

16 AND, IN FACT, NOBODY ELSE FROM THE PATENT OFFICE HEARD
17 WHAT YOU HEARD FROM DR. SCHULL. HE DIDN'T GO TO THE PATENT
18 OFFICE DURING PROSECUTION OF MR. PATTERSON'S PATENT AND SAY,
19 THIS IS MY SYSTEM, THIS IS MY PATENT, THIS IS HOW IT WORKS.
20 THEY DIDN'T KNOW ANYTHING ABOUT THE '070 PATENT AND THEY
21 DIDN'T HEAR FROM DR. SCHULL. YOU'RE THE FIRST NINE PEOPLE TO
22 GET TO ANSWER THAT QUESTION. AND IT'S AN IMPORTANT ONE. AND
23 WE WOULD ASK YOU TO TAKE IT SERIOUSLY EVEN IF YOU FIND THAT
24 THE PATENT'S NOT INFRINGED.

25 SO LET'S GET INTO THE MERITS NOW OF THE ANALYSIS. SO, WE

1 LOOK TO CLAIM 1 OF THE '541 PATENT, AND WHAT DR. WICKER TOLD
2 YOU WAS, LOOK, UNDER THE PROPER INTERPRETATION OF THE CLAIMS,
3 IT'S NOT ALL DISCLOSED IN SCHULL BECAUSE SCHULL GENERATES THE
4 PERMISSION AT THE SERVER AND IT'S NOT CLIENT CENTRIC. HE
5 ADMITTED THAT. THAT'S REASONABLE.

6 BUT WHAT HE TOLD YOU WAS, IT WOULDN'T HAVE BEEN A LEAP TO
7 TAKE THE GENERATION OF THE SERVER -- OF THE CLIENT --
8 PERMISSION AT THE SERVER AND MOVE IT TO THE CLIENT. THAT
9 WOULD NOT HAVE BEEN A LEAP. THAT'S WHAT HE TOLD YOU.

10 WHAT DR. KELLER SAID WAS, LOOK, I'VE GOT ALL THESE REASONS
11 WHY IT'S NOT MET, AND SHOWED YOU ALL THOSE X'S ON THE BOARD.
12 BUT AT THE END OF THE DAY WHEN I ASKED HIM, ALL THOSE X'S,
13 WHAT DO THEY BOIL DOWN TO? THEY JUST BOIL DOWN TO TWO THINGS.
14 AND, ACTUALLY, REALLY ONLY ONE THING, WHICH IS HIS OPINION
15 THAT AFTER EVERYTHING THAT DR. WICKER TOLD YOU ABOUT WHY
16 SCHULL DISCLOSES EVERYTHING, THAT THAT ONE LIMITATION, THAT
17 DR. KELLER'S OPINION BOILS DOWN TO THE ARGUMENT THAT, WELL,
18 IT'S GENERATED AT THE SERVER AND PASSED TO THE CLIENT, SO IT
19 CAN'T MEET THE CLAIMS.

20 THAT DOESN'T MAKE ANY SENSE. THAT'S EXACTLY WHAT DIGITAL
21 REG IS SAYING THE ADOBE PRODUCTS DO. AND SO IF YOU LOOK AT
22 THE TESTIMONY, AND YOU REALLY CONSIDER WHAT YOU HEARD LAST
23 WEEK FROM DR. DEVANBU, AND THIS WEEK FROM DR. KELLER, WHO
24 INCIDENTALLY DIDN'T TALK TO EACH OTHER, DIDN'T REVIEW EACH
25 OTHER'S REPORTS AND DIDN'T EVEN KNOW HOW THEY WERE OPINING ON

CLOSING ARGUMENT - MEHTA

1 THEIR DIFFERENT ISSUES BEFORE THEY OFFERED THEIR OPINIONS, HAD
2 NO COORDINATION AT ALL, AND CAME INTO DIRECT CONFLICT WITH ONE
3 ANOTHER.

4 WHAT DR. DEVANBU SAID WAS, LOOK, IT'S DONE AT THE SERVER,
5 BUT WE ARE DECRYPTING IT. AND IF WE DECRYPT IT, THAT'S THIS
6 REGENERATION THING. AND WHAT DR. KELLER SAID WAS, WELL, IN
7 THE SCHULL PATENT, IT'S GENERATED AT THE SERVER, ENCRYPTED AND
8 DECRYPTED, BUT THE DECRYPTION ISN'T ENOUGH, AND THAT'S WHY IT
9 IS NOT MET BY SCHULL.

10 AND I WOULD ASK YOU TO CONSIDER CLOSELY WHETHER IT'S
11 REASONABLE FOR DIGITAL REG TO COME IN AND SAY, WELL, FOR ADOBE
12 THIS DECRYPTION PROCESS IS SOMEHOW REGENERATING, BUT FOR
13 SCHULL IT'S NOT.

14 IS THAT RIGHT? CAN THEY REALLY DO THAT? CAN THEY REALLY
15 HAVE IT BOTH WAYS FOR INFRINGEMENT AND INVALIDITY?

16 YOU WILL LOOK AT THE EVIDENCE, THE SCHULL PATENT'S IN THE
17 RECORD. I URGE YOU TO LOOK AT IT. THIS IS FROM FIGURE 2.

18 FIGURE 2 IN THE SCHULL PATENT SHOWS THE PROCESS OF
19 CREATING A PASSWORD AT THE SERVER, THEN ENCRYPTING IT,
20 TRANSMITTING IT TO THE CLIENT, AND THEN DECRYPTING IT. LOOK
21 AT THE FIGURE. IF WORKS JUST LIKE THE ADOBE PRODUCTS DO, JUST
22 LIKE THE ADOBE PRODUCTS DO.

23 NOW, THIS RAISES THE QUESTION. SO LET'S SAY YOU FIND, AS
24 I HOPE YOU WILL, THAT THEY CAN'T TALK OUT OF BOTH SIDE OF
25 THEIR MOUTH, AND THAT DIGITAL REG HAS TO BE CONSISTENT, AND

CLOSING ARGUMENT - MEHTA

1 YOU FIND ADOBE DOESN'T INFRINGE. WELL, THE SCHULL PATENT
2 STILL INVALIDATES THE TWO DIGITAL REG PATENTS.

3 AND THE REASON IS THE OBVIOUSNESS POINT THAT I MADE
4 EARLIER. I WANT TO HONE IN ON THE SPECIFIC EVIDENCE OF THAT
5 NOW.

6 WITH RESPECT TO OBVIOUSNESS, WHAT DR. WICKER -- I'M SORRY,
7 WHAT DR. SCHULL TOLD US WAS, YES, I DID IT AT THE SERVER, BUT
8 IT WOULDN'T HAVE BEEN ANY STRETCH AT ALL BACK IN THE DAY TO DO
9 THAT AT THE CLIENT, WHICH IS THE THING THAT DIGITAL REG SAID
10 MADE THEM DIFFERENT. THAT WOULDN'T HAVE BEEN HARD. HE WOULD
11 HAVE JUST MOVED THE CODE OVER.

12 AND DR. WICKER EXPLAINED THAT THAT MODIFICATION, THE ONE
13 THING THAT'S DIFFERENT BETWEEN SCHULL AND THE PATENTS, THE
14 ONLY THING THAT THEY HAVE IDENTIFIED AS BEING DIFFERENT, THAT
15 THAT MODIFICATION, THAT WOULD HAVE BEEN KNOWN TO DO. THAT
16 WOULD HAVE BEEN OBVIOUS TO PEOPLE OF ORDINARY SKILL IN THE
17 ART? SOMEONE WITH A DEGREE IN COMPUTER SCIENCE AND SOME WORK
18 EXPERIENCE, OR EVEN WITHOUT THE WORK EXPERIENCE, SOMEONE WITH
19 A DEGREE IN COMPUTER SCIENCE WOULD KNOW THAT TAKING IT FROM
20 THE SERVER AND MOVING IT TO THE CLIENT WAS NOT A LEAP. THAT
21 WAS WELL WITHIN THE SKILLS OF A PERSON OF ORDINARY SKILL IN
22 THE ART.

23 AND HE EXPLAINED THAT YOU WOULD BE MOTIVATED TO DO THAT.
24 THERE'S REASONS AND KNOWLEDGE OF THE PEOPLE OF ORDINARY SKILL
25 IN THE ART THAT WOULD ALLOW THEM TO DO THAT IF THEY WANTED TO

CLOSING ARGUMENT - MEHTA

1 BECAUSE IT WAS KNOWN THAT YOU COULD OFFLOAD SOME OF THE
2 PROCESS AND POWER FROM THE SERVER, SOME OF THE GEAR WORK THAT
3 HAS TO BE DONE TO GENERATE THOSE PERMISSIONS, AND IF YOU
4 WANTED TO DO IT IN THE WAY THAT MR. PATTERSON CHOOSES TO DO
5 IT, WHICH IS AT THE CLIENT, YOU JUST MOVE IT OVER AND THE
6 GEARS MOVE OVER TO THE CLIENT. THAT'S NOT A LEAP. THAT'S
7 OBVIOUS.

8 AND DR. KELLER, HE TESTIFIED A LOT ABOUT HOW SCHULL WASN'T
9 EXACTLY THE SAME AS THE PATENTS, WHICH WE AGREE WITH, BUT HE
10 NEVER REBUTTED DR. WICKER'S OPINION THAT YOU COULD MODIFY
11 SCHULL TO JUST MOVE IT OVER FROM THE SERVER TO THE CLIENT, AND
12 THAT WOULD HAVE BEEN SOMETHING THAT WAS WITHIN THE SKILL OF
13 SOMEONE IN THE ART. HE DIDN'T DENY THAT AT ALL. IT WAS JUST
14 YESTERDAY. THINK BACK, LOOK AT YOUR NOTES, THERE WAS NO
15 DENIAL OF THAT.

16 LET'S TALK ABOUT THE '670. '670 IS CLAIM 32, WHICH WE
17 TALKED ABOUT YESTERDAY, AND CLAIM 45. AND WHAT WE SAW WHEN WE
18 WERE TALKING ABOUT HOW THE PATENT WORKS WITH DR. WICKER WAS,
19 THE CONCEPT OF THE CREATOR, AND THEN THE FIRST RECIPIENT AND
20 THE SUCCESSIVE RECIPIENT AND ANOTHER SUCCESSIVE RECIPIENT.
21 EACH OF THOSE RECIPIENTS SENDS THEIR NOTIFICATION INFORMATION
22 BACK TO THE SERVER IN THE MIDDLE.

23 SCHULL, SOFTLOCK WORKS THE SAME WAY. LOOK AT EXHIBIT 624.
24 IT'S GOING TO BE IN THE JURY ROOM FOR YOU. DR. SCHULL TALKED
25 ABOUT IT YESTERDAY. IT'S A BROCHURE THAT SHOWS HOW THE SCHULL

1 INVENTION, THE ONE THAT'S IN THE PATENT, THE ONE THAT WAS IN
2 HIS PRODUCTS, HOW IT WORKS. IT WORKS THE SAME WAY. IT HAS A
3 CREATOR OF CONTENT SENDING INFORMATION TO A RECIPIENT THAT
4 THEN CAN BE PASSED TO OTHER PEOPLE, AND YOU ARE SENDING
5 INFORMATION BACK.

6 SO WITH THOSE SIMILARITIES, DR. WICKER SAID, LOOK, THERE'S
7 ONE DIFFERENCE, WHICH IS THE KEY LIMITATION, THE "UNTIL"
8 LIMITATION, THE DENYING ACCESS, WHAT'S TRIGGERING THE ACCESS.
9 THE SAME ONE THAT'S THE KEY LIMITATION ON INFRINGEMENT IS THE
10 KEY LIMITATION ON INVALIDITY.

11 DR. WICKER SAID THAT IS NOT DISCLOSED IN SCHULL FOR THE
12 SAME REASONS IT'S NOT DISCLOSED IN THE ADOBE PRODUCTS, BUT IT
13 WOULD HAVE BEEN OBVIOUS TO COMBINE SCHULL WITH GRISWOLD.

14 AND DR. KELLER SAID, LOOK, THESE THINGS ARE DIFFERENT.
15 THEY'RE DIFFERENT FOR TWO REASONS. HE HAD THE CHART WITH ALL
16 THE X'S, AND HE MARKED THEM ALL OFF.

17 BUT AT THE END OF DAY WHEN I ASKED HIM WHAT ALL THOSE X'S
18 REALLY BOIL DOWN TO, JUST TWO REASONS, NOTIFICATION
19 INFORMATION AND THE DENYING THE ACCESS UNTIL, WHAT IS THE
20 TRIGGER EVENT FOR ACCESS.

21 ON NOTIFICATION INFORMATION, DR. KELLER DIDN'T APPLY THE
22 COURT'S CLAIM CONSTRUCTION BECAUSE THERE WAS NONE. SO HE
23 APPLIED HIS OWN INTERPRETATION OF NOTIFICATION INFORMATION.
24 FAIR ENOUGH, EXCEPT HIS INTERPRETATION OF NOTIFICATION
25 INFORMATION IS INCONSISTENT WITH DR. DEVANBU'S.

1 SO, FOR PROVING INFRINGEMENT BY ADOBE, DIGITAL REG AND
2 DR. DEVANBU CLAIM THAT IF YOU JUST SEND OUT PERSONAL
3 INFORMATION ABOUT THE USER, PERSONAL REGISTRATION INFORMATION,
4 THAT THAT'S ENOUGH. BUT DR. KELLER, APPLYING HIS
5 INTERPRETATION FOR INVALIDITY SAID THAT'S NOT ENOUGH. IT HAS
6 TO BE USED FOR TRACKING.

7 THAT INCONSISTENCY CAN'T BE RECONCILED. YOU CAN'T HAVE IT
8 BOTH WAYS.

9 LET'S ASSUME THAT YOU AGREE WITH DR. KELLER THAT
10 NOTIFICATION INFORMATION DOES REQUIRE TRACKING. IN THAT CASE,
11 DR. DEVANBU WOULDN'T HAVE PROVED INFRINGEMENT, SO THERE WOULD
12 BE NONINFRINGEMENT. BUT THERE WOULD ALSO BE INVALIDITY.

13 AND THE REASON FOR THAT IS, AS DR. WICKER POINTED OUT, THE
14 SCHULL PATENT DOES TEACH TRACKING. IT DOES TEACH TRACKING.
15 AND THE THING THAT DR. KELLER SAID MADE TRACKING IMPORTANT,
16 COLLECTING MARKETING INFORMATION SO THAT YOU CAN TRACK THE
17 USERS, WELL, THE SCHULL PATENT TALKS ABOUT THAT, TOO.

18 RIGHT THERE IN THE BACKGROUND OF THE INVENTION WHEN THEY
19 ARE EXPLAINING WHY YOU WOULD WANT TO USE THE SCHULL
20 TECHNOLOGY, WHY THE PATENT WAS IMPORTANT, DR. SCHULL SAID,
21 WELL, THIS INVENTION ALLOWS YOU TO TRACK INFORMATION SO THAT
22 YOU'RE NOT LOSING VALUABLE INFORMATION ABOUT YOUR CUSTOMERS
23 AND ABOUT THE MARKET.

24 SO THE VERY SAME REASON THAT DR. KELLER SAID THAT THIS
25 NOTIFICATION INFORMATION AND TRACKING WAS IMPORTANT FOR THE

1 CLAIMS, THE SCHULL PATENT TEACHES THAT.

2 AND DR. KELLER ADMITTED ON CROSS-EXAMINATION THAT HE
3 HADN'T CONSIDERED THAT. HE DIDN'T REFERENCE THAT DURING HIS
4 DIRECT EXAMINATION.

5 WELL, YOU CAN LOOK AT IT. YOU WILL HAVE THE SCHULL PATENT
6 IN EVIDENCE. IT'S EXHIBIT 418. AND I WOULD ASK YOU TO LOOK
7 AT IT, AND LOOK AT WHETHER EXHIBIT 418 IS DIFFERENT THAN THE
8 DIGITAL REG PATENTS AND WHETHER IT'S DIFFERENT THAN THE '670
9 PATENTS. IT DOESN'T DIFFER WHEN IT COMES TO NOTIFICATION
10 INFORMATION.

11 THE SECOND THING THAT DR. KELLER POINTED TO AS A
12 DIFFERENCE WAS THIS CONCEPT OF TRIGGERING ACCESS. DO YOU
13 TRIGGER ACCESS BASED ON SENDING SOMETHING OUT OR DO YOU NEED
14 TO GET THE PERMISSION BACK, THE KEY BACK, THE ACKNOWLEDGMENT
15 BACK. YOU HAVE TO GET SOMETHING BACK.

16 AND WHAT HE SAID WAS, LOOK, FROM MY PERSPECTIVE, I THINK
17 YOU HAVE TO GET SOMETHING BACK. YOU HAVE TO GET A NETWORK
18 ACKNOWLEDGMENT BACK, AND THAT'S WHY SCHULL IS DIFFERENT.

19 HE ADMITTED ON CROSS-EXAMINATION THAT THE COURT'S CLAIM
20 CONSTRUCTION ACTUALLY DOESN'T HAVE ANY CONCEPT OF NETWORK
21 ACKNOWLEDGMENT IN IT. AND WHEN YOU GO BACK TO THE JURY ROOM
22 AND YOU LOOK AT THE CLAIM CONSTRUCTION, THE COURT'S
23 CONSTRUCTION, THE COURT'S CONSTRUCTION MAKES CLEAR THAT THE
24 PATENTED INVENTION GRANTS ACCESS IMMEDIATELY UPON THE ATTEMPT
25 TO TRANSMIT NOTIFICATION, THAT'S THE SENDING, BUT WITHOUT

1 WAITING FOR A RESPONSE FROM THE SERVER. WITHOUT WAITING FOR A
2 RESPONSE FROM THE SERVER.

3 SO THAT NETWORK ACKNOWLEDGMENT CONCEPT THAT DR. KELLER WAS
4 TALKING ABOUT, THAT'S INCONSISTENT WITH THE COURT'S CLAIM
5 CONSTRUCTION. SO LOOK AT THE COURT'S CLAIM CONSTRUCTION AND
6 LOOK AT DR. KELLER'S ANALYSIS, AND ASK YOURSELVES IS SCHULL
7 REALLY DIFFERENT WHEN YOU APPLY THE COURT'S CLAIM
8 CONSTRUCTION? IT'S NOT.

9 NOW, LET'S ASSUME THAT DR. KELLER'S ANALYSIS, WE'RE SORT
10 OF TAKING IT AT FACE VALUE, AND HE'S LOOKING AT WHETHER OR NOT
11 THE GRISWOLD REFERENCE THAT DR. WICKER COMBINED WITH THE
12 SCHULL REFERENCE, WHETHER THE GRISWOLD REFERENCE TEACHES
13 GETTING ACCESS UPON SENDING SOMETHING OUT.

14 WELL, HE SAID IT DOESN'T. BUT I WOULD ASK YOU TO GO BACK
15 AND LOOK AT THE GRISWOLD REFERENCE WHICH YOU ALREADY HAVE.
16 YOU DON'T HAVE TO READ THE WHOLE THING. THERE HAVE BEEN KEY
17 PASSAGES THAT HAVE BEEN POINTED OUT TO YOU IN DR. WICKER'S
18 TESTIMONY. AND WHAT WICKER EXPLAINS AND WHAT THE PATENT SHOWS
19 IS THAT YOU ARE SENDING THE REQUEST OUT, AND THAT YOU ARE
20 TRYING ACCESS BASED ON THE SENDING WITHOUT WAITING FOR A
21 RESPONSE FROM THE SERVER, WITHOUT WAITING TO GET SOMETHING
22 BACK.

23 AND, AGAIN, ON THIS KEY QUESTION, CONSIDER CAN THEY HAVE
24 IT BOTH WAYS? CAN DR. DEVANBU ADMIT THAT IN ORDER TO PRACTICE
25 THE CLAIMS UNDER HIS READING FOR INFRINGEMENT, YOU HAVE TO

CLOSING ARGUMENT - MEHTA

1 SEND SOMETHING OUT AND GET SOMETHING BACK, WHILE DR. KELLER IS
2 SAYING, OH, NO, NO, NO, IF YOU SEND SOMETHING OUT AND GET
3 SOMETHING BACK, THAT THAT'S NOT ENOUGH. CAN THEY REALLY BE
4 CONSISTENT? THEY CAN'T.

5 DR. KELLER SAID IF GRANTING OF THE ACCESS IS BASED ON
6 GETTING SOMETHING BACK, YOU HAVE TO GET THE KEY BACK, YOU HAVE
7 TO GET THE VOUCHER BACK, YOU HAVE TO GET THE E-LICENSE BACK.
8 THE WAY IT WORKS IN THE ADOBE PRODUCTS, THAT WOULDN'T BE
9 ENOUGH UNDER HIS READING OF THE CLAIM. THAT'S NOT ENOUGH FOR
10 THE GRANTING OR DENIAL OF ACCESS.

11 THEIR INFRINGEMENT THEORY AND THEIR INVALIDITY THEORY ARE
12 DIRECTLY IN CONFLICT WITH EACH OTHER.

13 SO THE FINAL THING THAT I WOULD ASK YOU TO THINK ABOUT
14 WHEN IT COMES TO THIS OBVIOUSNESS FOR THIS, AND THIS IS EVEN
15 IF YOU FIND THAT ADOBE DOESN'T INFRINGE THE '670 PATENT, WHICH
16 I THINK THE EVIDENCE WILL COMPEL YOU TO DO, EVEN THEN, BECAUSE
17 IT'S IMPORTANT, CONSIDER THE OBVIOUSNESS OF THE '670 PATENT
18 OVER SCHULL AND OVER GRISWOLD AND ALL THE TESTIMONY YOU HEARD
19 YESTERDAY, AND THEN CONSIDER THAT DR. KELLER NEVER DISPUTED
20 THAT THOSE TWO REFERENCES WOULD BE COMBINED OR COULD BE
21 COMBINED.

22 HE DIDN'T EXPLAIN WHY THAT WOULDN'T BE A REASONABLE
23 COMBINATION. AND HE NEVER DISPUTED THAT IT WOULD HAVE BEEN
24 WITHIN THE SKILL OF A PERSON OF ORDINARY SKILL IN THE ART TO
25 TAKE SCHULL AND TAKE GRISWOLD AND COME UP WITH EXACTLY THE

THING THAT THEY NOW CLAIM IS COVERED BY THE PATENT. CONSIDER
WHAT YOU HEARD FROM DR. WICKER AND WHAT YOU DIDN'T HEAR FROM
DR. KELLER.

THOSE ARE THE FIRST TWO QUESTIONS. AT THIS POINT I'M GOING TO TURN IT OVER TO MR. REINES, AND I'M GOING TO ASK YOU, AFTER YOU CONSIDER THOSE TWO QUESTIONS, TO CONSIDER THE NEXT THREE.

(PAUSE IN THE PROCEEDINGS.)

CLOSING ARGUMENT

MR. REINES: GOOD MORNING.

IN PURSUING THE JOB THAT YOU HAVE RIGHT NOW, I THINK
THERE'S THREE TOOLS TO USE: LOGIC, EVIDENCE, AND CREDIBILITY.

LET ME START WITH EVIDENCE ON THE QUESTION OF WHAT THEY
KNEW AND WHEN THEY KNEW IT. THAT WAS THE POSED QUESTION, AND
I'M GOING TO ADDRESS IT WITH REFERENCE TO HARD EVIDENCE.

THE STATEMENT IN OPENING STATEMENT, AND WE HEARD THE REDUX
ON CLOSE WAS THAT ADOBE HAS STOLEN PROPERTY, AND THAT THE
TIMING OF WHAT PEOPLE KNEW AND WHEN THEY KNEW IT IS VERY
IMPORTANT.

LET'S LOOK AT THAT. YOU WILL REMEMBER THIS TIME LINE THAT WAS PRESENTED BY DIG REG. LET'S HONE IN ON THE THREE MEETINGS THAT SUPPOSEDLY HAPPENED. YOU WERE PROMISED IN OPENING STATEMENT THAT YOU WOULD HEAR ABOUT THREE MEETINGS THAT HAPPENED. 2004, 2008 AND 2010.

THIS WAS WHAT WAS SAID. "THEY HAD A MEETING WITH A GROUP

1 IN JUNE OF 2004." THAT'S WHAT YOU HEARD.

2 MULTIPLE PROBLEMS. IT WAS A PHONE CALL, SUPPOSEDLY.

3 IN TERMS OF WHO THEY MET WITH, NOTWITHSTANDING THE
4 EMPHASIZE THAT WAS PLACED ON THIS, MR. VENTERS SAYS, NO ONE
5 EVER ASKED ME WHO I MET WITH. THERE'S NEVER BEEN ANY
6 IDENTIFICATION OF ANYONE AT ADOBE VENTURES WHO WAS MET WITH
7 FROM ANYBODY. HOW CAN WE DEFEND OURSELVES IF THERE'S NO
8 STATEMENT OF WHO WE SUPPOSEDLY MET WITH? IT JUST DOESN'T PASS
9 THE SMELL TEST IF THIS IS AS CRITICAL AS IT WAS STATED.

10 AND THE DATE. THEIR ARGUMENT IS JUNE 2004. YOU KNOW WHAT
11 THE COURT SAID? NOT IN JUNE. SO THEY DON'T KNOW WHAT THE
12 DATE IS, THEY DON'T KNOW WHO THE PEOPLE WERE. AND YOU CAN
13 CALL IT A MEETING, BUT IT WAS A PHONE CALL, AT MOST.

14 THEN DURING THE MEETING, WHAT WAS SUPPOSEDLY SENT WAS A
15 PAPER CALLED THE ADOBE VALUE PROPOSITION.

16 AND MR. VENTERS ON DIRECT EXAMINATION, CONFIDENT, PLAY IT
17 STRAIGHT UP TO YOU, SAID EXHIBIT 125C, HE KNOWS THERE'S DOZENS
18 OF VERSIONS OF THIS, 125C, THIS IS THE PAPER WE SENT, AND THEN
19 HE WENT THROUGH IT LIKE IT WAS A SCRIPT.

20 HE REMEMBERED TEN YEARS AGO, AND HE SAID IN ONE PHONE CALL
21 AMONG ALL THE COMPANIES HE TALKED TO, AND HE SAID THIS IS WHAT
22 I SAID, AND HE WENT DOWN IT.

23 ONE OF THE THINGS HE TOLD YOU IS IT HAD THE NUMBER OF THE
24 '670 PATENT IN IT. YOU LOOK AT THE EXHIBIT THAT'S ULTIMATELY
25 PUT IN THERE, AND YOU TELL ME WHETHER YOU SEE THE '670 PATENT

1 NUMBER IN THERE.

2 BUT ON DIRECT EXAMINATION, HE THEN REVERSED AND SAYS, NO,
3 ACTUALLY, 125C IS NOT THE DOCUMENT. THE COURT HAD TO STEP IN
4 ON THIS IN INSTRUCTIONS AND SAY, DIFFERENT DRAFTS OF THE
5 DOCUMENT EXIST, AND WHILE HE STATES A VERSION WAS SENT, HE
6 CANNOT IDENTIFY THE PARTICULAR VERSION.

7 EVEN AFTER HE TESTIFIED. HE DIDN'T KNOW WHAT DOCUMENT HE
8 SENT. LET'S BE HONEST. SHIFTING STORY AND ABSOLUTELY NO
9 CORROBORATION.

10 THEY DIDN'T GET MR. FARLEY TO SAY THAT HE HEARD THIS CALL.
11 HE DIDN'T PARTICIPATE. MR. PATTERSON DIDN'T PARTICIPATE.

12 2008, THE REPRESENTATION FROM DIG REG'S COUNSEL AFTER
13 PREPARING FOR TRIAL SAYS THERE'S A 2008 MEETING. NO EVIDENCE
14 AT ALL.

15 YOU CAN'T CONCLUDE THERE'S A 2008 MEETING IF THERE'S NO
16 EVIDENCE. COUNSEL PROMISED YOU THAT IT WOULD COME. IT DIDN'T
17 COME.

18 2010. THIS IS FROM THEIR OPENING PROMISE TO YOU. APRIL
19 OF 2010. STUDY THAT EVIDENCE WHEN YOU GO BACK. REMEMBER YOUR
20 NOTES. NOTHING. THEY PROMISED YOU THREE MEETINGS WOULD
21 HAPPEN, TWO DEFINITELY DIDN'T, AT LEAST ACCORDING TO THE
22 EVIDENCE, AND ONE IS SKETCHY, AT BEST.

23 ALL RIGHT. LET'S LOOK AT THE TIME LINE FURTHER.

24 WHAT DID DIGITAL REG KNOW, OKAY? INSTEAD OF POINTING THE
25 FIGURE, WHAT DID THEY KNOW? MR. VENTERS TESTIFIED IN 2002 TO

CLOSING ARGUMENT - REINES

1 2004 HE KNEW ADOBE WAS INFRINGING. NOT MUCH EQUIVOCATION
2 THERE. GENUINELY BELIEVED.

3 ALL RIGHT. NO NOTICE OF INFRINGEMENT, NO LAWSUIT, NOT CAN
4 WE RESOLVE THIS, NOT I THINK YOU'RE INFRINGING, LET'S TALK
5 ABOUT IT.

6 WELL, HE SAYS IN 2004, HE HAD THIS PHONE CALL. HE
7 MENTIONED ADOBE VALUE PROPOSITION. THIS DOCUMENT WENT, AMONG
8 OTHERS, TO DOLBY. AT LEAST DOLBY GOT THE COURTESY OF
9 INFORMATION, WELL, WE THINK YOU MIGHT BE VIOLATING IF HE EVEN
10 SENT IT OUT.

11 BY THE WAY, ONE OTHER THING ABOUT THE ADOBE VALUE
12 PROPOSITION THAT MR. VENTERS WAS SURE HE SENT THAT THEN TURNED
13 OUT HE DIDN'T KNOW WHICH VERSION, IT HAD A COMMENT BUBBLE ON
14 IT THAT SAID, WE CAN'T FIGURE OUT -- THERE'S A TOUGH STRATEGY
15 NUT TO CRACK.

16 WHO SENDS TO A MAJOR COMPANY WHEN THEY ARE APPROACHING
17 THEM A DOCUMENT WITH A COMMENT BUBBLE ON IT AND NO EXPLANATION
18 OF HOW THEY SOLVED THEIR STRATEGY CHALLENGE.

19 BUT IN ANY EVENT, IN THAT MEETING, IF IT HAPPENED, THIS
20 PHONE CALL -- NOW I'M CALLING IT A MEETING -- IN THIS PHONE
21 CALL THEY ARE NOT EVEN SAYING THEY GAVE US THE COURTESY OF
22 SAYING WE THINK YOU MIGHT BE INFRINGING, WE THINK YOU'LL AVOID
23 INFRINGEMENT, NOTHING. NO OTHER MEETINGS HAPPENED.

24 BUT WHAT THEY DID DO IS IN 2007, AFTER RETAINING
25 THINKFIRE, THEY RETAINED A COMPANY WHOSE SPECIALTY WAS USING

CLOSING ARGUMENT - REINES

1 THE INFORMATION IN THE MARKETPLACE AND DETERMINING WHO'S
2 INFRINGING. THINKFIRE. AND THEY GOT A LONG LIST IN THIS
3 TEXAS LITIGATION IN 2007.

4 NOW, I THOUGHT IT WAS SOMEWHAT BIZARRE BECAUSE WHEN THEY
5 WANTED TO JUSTIFY THE LOW LICENSES AND ALL THE SETTLEMENTS,
6 FIVE FIGURES, 50,000, 40,000 THEY ENDED UP SAYING, WELL, THOSE
7 WERE MISFIRES. THEY WERE BARELY INFRINGING AT ALL. WE MADE A
8 BIG MISTAKE.

9 SO, THEY SUED ALL THESE COMPANIES, AND BIG ONES,
10 MICROSOFT, MACROVISION, AND THEY MISFIRED? BUT THEY DIDN'T
11 THINK TO SUE ADOBE WHO THEY KNEW WAS INFRINGING SUPPOSEDLY
12 FROM 2002 TO 2004?

13 AND THEN MR. VENTERS ADMITTED, PRIOR TO 2011, HE NEVER
14 INFORMED ADOBE THAT IT WAS INFRINGING THE PATENTS-IN-SUIT. NO
15 ONE EVER SAID, WE THINK YOU ARE INFRINGING, WE THINK YOU HAVE
16 A PROBLEM, LET'S WORK IT OUT LIKE NORMAL BUSINESS PEOPLE
17 WOULD. ALMOST TEN YEARS OF LYING IN WAIT?

18 NO NOTICE, NO LAWSUIT, NO LAWSUIT. WE DON'T NEED A
19 LAWSUIT TO PAY ATTENTION. WE NEED THE COURTESY OF A
20 COMMUNICATION THAT SAYS LET'S TALK ABOUT THIS LIKE RESPONSIBLE
21 BUSINESS PEOPLE. AND ADOBE DOESN'T THAT EVERY DAY.

22 NOW, JONATHAN HERBACH, WHO CAME UP, AND TALK ABOUT CAST
23 ASPERSIONS. THEY SAID THEY WERE GOING TO FORCE HIM TO TESTIFY
24 AND CONFIRM THAT HE INTENTIONALLY DESIGNED LIVECYCLE WITH FULL
25 KNOWLEDGE OF THE DIGITAL REG'S PATENTS. THERE IT IS IN BLACK

1 AND WHITE. YOU LEVEL THAT KIND OF ALLEGATION ABOUT A
2 PROFESSIONAL?

3 WHAT DID MR. HERBACH SAY? AND DID YOU BELIEVE MR. HERBACH
4 WHEN HE TESTIFIED ABOUT HOW HE CAME OUT, HE WORKED -- WORKED
5 THROUGH COLLEGE FOR ADOBE, CAME OUT AND WORKED IN THE R&D
6 CENTER. BY LATE 2000 SUMMER, HE HAD A COMPLETE WORKING
7 PROTOTYPE BEFORE THIS SUPPOSED PHONE CALL SOMETIME, THEY DON'T
8 KNOW.

9 HE DID HIS WORK ON HIS OWN. I ASKED HIM, HAVE YOU EVER
10 HEARD OF ANYONE GATHERING INFORMATION FROM ADOBE VENTURES AND
11 BRINGING IT OVER?

12 NO, I NEVER -- WE NEVER DO THAT.

13 HAD YOU EVER READ THE DIG REG PATENTS? REMEMBER THE
14 PROMISE? WHO COULD HAVE FORCED THIS MAN TO TESTIFY THAT HE
15 READ THE PATENTS AND USED THEM IN HIS DESIGN.

16 THAT'S WHAT HE SAID. I SHOWED IT TO YOU IN BLACK AND
17 WHITE.

18 MR. HERBACH, I THINK -- I THOUGHT HE HANDLED IT -- I KNOW
19 HE HANDLED IT BETTER THAN I WOULD, AS YOU CAN TELL.

20 HE SAID, NO, I'M PRETTY CONFIDENT WE CAN INNOVATE ON OUR
21 OWN. WE DON'T NEED MR. PATTERSON.

22 AND THEN I SAID, DO YOU KNOW WHAT KIND OF ALLEGATIONS THEY
23 ARE LEVELING? AND HE SAID, I'M TOTALLY SURPRISED AND
24 SPEECHLESS. LIKE A PROFESSIONAL ANSWER.

25 I DIDN'T KNOW WHAT HE WAS GOING TO SAY BECAUSE I NEVER

1 ASKED HIM THAT BEFORE.

2 AND THEN MR. VENTERS SAID, NAH, WE CAN'T SAY THEY COPIED
3 ANYTHING.

4 ALL RIGHT. NOW LET'S TALK ABOUT THE PATENTS, THE PATENT
5 FILINGS. THE SUGGESTION WAS THAT ADOBE IS SOMEHOW GETTING ALL
6 THIS INFORMATION FROM DIG REG AND THEN USING IT FOR ITS PATENT
7 FILINGS, RIGHT?

8 MR. HERBACH, WITHOUT IMPEACHMENT OF ANY KIND, SAID I FILED
9 ON HALLOWEEN 2003 A WHOLE SET OF PATENTS COVERING LIVECYCLE.
10 NEVER CHALLENGED. THAT'S 2003 BEFORE ALL THESE OTHER EVENTS
11 THAT SUPPOSEDLY HAPPENED.

12 NOW, THEY CITE THE '384 PATENT AS ANOTHER EXAMPLE. LOOK,
13 PATTERSON WAS CITED. THIS WAS FILED, A DRM PATENT, IN JUNE OF
14 2000. SO, BEFORE THEY EVEN BOUGHT THE PATENT BACK OUT OF
15 BANKRUPTCY -- ACTUALLY BEFORE ANY OF THE PATENTS ISSUED. SO
16 IT WASN'T EVEN AVAILABLE INFORMATION. MR. HERBACH COULDN'T
17 HAVE TAKEN THE INFORMATION, IT WASN'T EVEN AVAILABLE. SO WE
18 SEE ALL THESE THINGS THAT HAPPENED EVEN BEFORE.

19 HERE'S ANOTHER PATENT. IT CITES PATTERSON, BUT WHAT YOU
20 HAVE TO ASK YOURSELVES IS WHAT'S THE WHOLE POINT OF THIS
21 ANYWAY? THAT'S WHAT WE ASK OURSELVES.

22 ALL OF THESE ADOBE PATENTS ISSUED. THE PATENT OFFICE
23 SAID, WE'RE DIFFERENT. NOW, WHAT THEY WANT TO SAY IS THAT
24 ADOBE IS THE LITTLE ERASER AT THE TOP OF THE PENCIL AND THAT
25 THE DIG REG'S TEAM CAME UP WITH HOW TO INVENT THE PENCIL IN

1 THE FIRST PLACE.

2 HAVE YOU SEEN ANY EVIDENCE OF THAT? HAVE YOU SEEN ANY
3 EVIDENCE THAT THESE ADOBE ARE BELLS AND WHISTLES BUILT ON TOP
4 OF WHAT DIG REG'S PATENTS COVER? NO, YOU HAVE NOT SEEN A
5 MORSEL OF THAT.

6 AND THESE CITATIONS OF PATTERSON, THE MORE PATTERSON WAS
7 CITED, AMONG THE HUNDREDS OF CITATIONS PER PATENT, HUNDREDS.
8 THE MORE HE WAS CITED, THE MORE THAT SHOWS WE ARE DIFFERENT.
9 WE ARE INNOVATIVE. I JUST DON'T KNOW WHAT ANY KIND OF
10 REASONABLE INFERENCE THEY CAN OBTAIN FROM THAT HISTORY.

11 SO WE WERE FIRST RELATIVE TO KNOWING ANY OF THEIR
12 INFORMATION AND THAT ALL OUR PATENTS ISSUED. THEY DIDN'T SHOW
13 YOU ONE PATENT THAT GOT -- WHERE THEY SAID, NO, YOU ARE TOO
14 CLOSE TO PATTERSON.

15 LET'S TALK ABOUT CREDIBILITY, ALL RIGHT? THAT'S WHAT YOU
16 ARE SUPPOSED TO JUDGE.

17 HERE'S THE CAST OF CHARACTERS THAT WE HEARD OVER THE LAST
18 COUPLE OF WEEKS. LOOK AT THE PEOPLE ON THE LEFT AND LOOK AT
19 THE PEOPLE ON THE RIGHT. OKAY? THIS IS FOR YOU TO MAKE THE
20 DECISION.

21 I AM GOING TO PROVIDE MY VIEWS AND EVIDENCE, BUT IT'S YOUR
22 DECISION AND I WANT YOU TO THINK ABOUT THOSE WITNESSES AND HOW
23 THEY APPEARED. AND THE COURT WILL GIVE YOU A WONDERFUL SET OF
24 TOOLS, ONE THROUGH SEVEN.

25 IT'S THE ONE THAT I CALL OUT AS IMPEACHMENT, DIFFERENT

1 TESTIMONY ON A PRIOR OCCASION. HOW MANY TIMES DID THEY GET
2 IMPEACHED? AND THE THING YOU NOTICE, COUNSEL CAN STEP UP,
3 THEY DID IT ONCE OR TWICE AND SAID, I DON'T THINK IT'S
4 INCONSISTENT TESTIMONY.

5 THEY SWORE ONE THING AT ONE TIME AND CHANGED THEIR
6 TESTIMONY AND SWORE DIFFERENTLY ANOTHER TIME. I DON'T THINK
7 THAT HAPPENED AND PREVENT IMPEACHMENT. DOZENS AND DOZENS OF
8 TIMES THEY WERE IMPEACHED WITH THEIR INCONSISTENT STATEMENTS.

9 THESE CONFLICTING POSITIONS JUST PERMEATE THEIR CASE.

10 RUNNING ROYALTY. YOU REMEMBER MR. PARR. HE SAID THE
11 PARTIES WOULD AGREE TO A RUNNING ROYALTY, NOT A LUMP SUM.

12 SUPPOSEDLY HE WAS GETTING ALL HIS INFORMATION FROM
13 MR. FARLEY. THAT'S WHAT HE TELLS YOU. I DON'T REALLY KNOW
14 THAT MUCH, I JUST GO TO MR. FARLEY AND HE TELLS ME.

15 MR. FARLEY SAYS, NORMALLY YOU DON'T GET A RUNNING ROYALTY
16 AND THEN HE SAID, I DOUBT WE WOULD HAVE GOTTEN IT BECAUSE I
17 HAD TO GO TO ADOBE AND I KNOW ADOBE DOESN'T LIKE THAT KIND OF
18 THING BECAUSE COMPANIES LIKE ADOBE IN THIS SPACE DON'T LIKE
19 IT.

20 WHAT IS THE BASIS FOR THERE TO BE A RUNNING ROYALTY? AND
21 THEIR OWN WITNESSES ARE IN CONFLICT.

22 NOW, THE PROBLEM WITH THAT ISN'T JUST THE INCONSISTENCY,
23 IT'S THIS FALSE PREMISE MR. PARR RUNNING IN THE WRONG
24 DIRECTION. BECAUSE THEN HE USED THIS FACT OF LOOKING AT
25 RUNNING ROYALTIES COMPARED TO A LUMP SUM TO EXCLUDE ALMOST ALL

CLOSING ARGUMENT - REINES

1 THE EVIDENCE IN THE CASE, AND CHERRY PICK THREE THINGS.

2 HE SAID ALL THE OTHER EVIDENCE I'M NOT GOING TO USE FOR MY
3 ROYALTY BECAUSE I'M COMMITTED TO THIS RUNNING ROYALTY. SO HE
4 JUST -- AT THIS POINT HE JUST RAN OFF IN THE WRONG DIRECTION.

5 LET'S LOOK AT WHERE THAT DIRECTION LED HIM ASTRAY. FIRST
6 MACROVISION. YOU REMEMBER THAT DISCUSSION. THAT WAS
7 1 PERCENT. MR. PARR. LET'S LOOK AT HIS PRIME INFORMATION
8 SOURCE, MR. FARLEY.

9 HE SAID, I HAVE NO IDEA ABOUT THIS 1 PERCENT FROM
10 MACROVISION WHEN I SIGNED THAT AGREEMENT. THAT WAS JUST
11 LAWYER STUFF. THE LAWYERS WANT TO PUT A NUMBER IN, SO IF WE
12 ARE IN NEGOTIATION OR SOMETHING, WE'VE GOT SOMETHING WE CAN
13 ARGUE, OR WHATEVER. I ASSUME THAT'S THE BASIS.

14 ALL HE CARED ABOUT WAS GETTING HIS 89,000 BUCKS. THAT IS
15 WHAT HE CARED ABOUT. THAT'S WHAT HE SAID.

16 SO THIS IDEA THAT MR. PARR'S RELYING ON 1 PERCENT WHEN THE
17 PERSON THAT NEGOTIATED THE AGREEMENT AND SIGNED IT SAID THAT
18 WAS IRRELEVANT, TELLS YOU ABOUT THE TYPE OF EVIDENCE THEY ARE
19 RELYING ON.

20 LET'S LOOK AT INTUIT. AGAIN, MR. PARR WENT TO HIS SOURCE
21 AND SAID, I GOT THE REVENUE NUMBER FROM MY DISCUSSION WITH
22 MIKE FARLEY. BEFORE I EVEN MOVED TO THE OTHER SIDE OF THE
23 SCREEN, THE COURT SAID, WELL, THAT'S NOT SUBSTANTIVE EVIDENCE.

24 HERE IS WHERE THE COMMON SENSE AND LOGIC COMES IN. IF
25 MR. FARLEY CAN'T TESTIFY UNDER OATH IN COURT ABOUT WHAT SOME

CLOSING ARGUMENT - REINES

1 OTHER COMPANY'S REVENUE IS, BECAUSE HE DOESN'T REALLY KNOW,
2 WHY IN THE WORLD WOULD WE LET THAT COME IN AS EVIDENCE BY HIM
3 HAVING AN UNRECORDED CONVERSATION SOMETIME AGO WITH SOMEONE
4 ELSE WHERE YOU, THE JURY, CAN'T SEE IT AND WE CAN'T
5 CROSS-EXAMINE IT. WHY WOULD THAT EVER BE PERMITTED? NOT
6 SUBSTANTIVE EVIDENCE.

7 MR. FARLEY WAS ASKED: DO YOU HAVE ANY KNOWLEDGE OF WHAT
8 INTUIT'S REVENUES WERE? NOW, I DON'T BLAME MR. FARLEY. HOW
9 IS HE SUPPOSED TO KNOW WHAT INTUIT'S REVENUES ARE?

10 HIS ANSWER WAS, NO, HE COULDN'T TESTIFY TO A RATE. SO
11 THERE'S ABSOLUTELY NO BASIS FOR THAT CALCULATED RATE OF
12 2.5 PERCENT, JUST AS A SYLLOGISTIC LOGIC. AND I KNOW THE
13 CALIBER OF THIS JURY, AND I KNOW YOU CAN FOLLOW THAT. IT'S
14 NOT THAT HARD.

15 NOW WE HAVE THIS ISSUE OF THE ADOBE PLUG-IN. SO THEY WANT
16 NO RELY ON THE ADOBE PLUG-IN. I MEAN, I JUST -- THE WORK
17 PRODUCT THAT SOMEONE WOULD COME, COME IN THIS COURTROOM AFTER
18 SPENDING HUNDREDS OF HOURS IN THE 70 CASES AND SAY, I'M
19 RELYING ON SOMETHING I NEVER SAW IT EVER LICENSED, IT'S NOT
20 ABOUT PATENTS, IT'S NOT ABOUT DRM BECAUSE YOU DON'T GET DRM
21 FOR THE 5.5 PERCENT, AND I'M GOING TO TELL YOU IT WAS A
22 NOVEMBER 4TH, 2013 AGREEMENT.

23 IS THAT THE KIND OF WORK PRODUCT YOU WANT TO RELY ON WHEN
24 YOU ARE DOING YOUR JOB WITH THE SERIOUSNESS THAT YOU ARE
25 TAKING THIS PROJECT?

CLOSING ARGUMENT - REINES

1 BUT INSTEAD OF LOOKING AT THIS BODY OF EVIDENCE THAT HE
2 HAS OF LICENSES OF THE PATENTS-IN-SUIT THEMSELVES, HE GOES OFF
3 AND LOOKS AT THIS NONPATENT, NONDRM AGREEMENT.

4 AND LOOK AT THOSE NUMBERS. I THOUGHT MR. PROWSE DID A
5 WONDERFUL JOB OF EXPLAINING TO YOU WHY THE VALUE WAS LOW. HE
6 JUST SAID, I'VE DONE A LOT OF THESE CASES; THESE NUMBERS ARE
7 LOW. AND THEY ARE. ESPECIALLY FOR SOMEONE THAT'S SEEKING
8 15 MILLION FOR ONLY A DOMESTIC LICENSE, FOR ONLY SELECT
9 PRODUCTS, FOR ONLY TWO PATENTS, NOT THE WHOLE PORTFOLIO, AND,
10 BY THE WAY, WE CAN SUE YOU TOMORROW. AND THAT'S THE
11 IMPORTANCE OF THE VALIDITY QUESTION.

12 THIS IS WHAT HE LOOKED AT, BECAUSE HE WENT RUNNING OFF IN
13 THE WRONG DIRECTION TO THE REASONABLE ROYALTY. NOW, THE
14 ANSWER MAY BE HE WENT RUNNING IN THAT DIRECTION BECAUSE HE
15 WANTED A DESTINATION SO HE HAD TO RUN IN THAT DIRECTION, AND
16 THAT'S WHY HE MADE THE ASSUMPTION OF REASONABLE ROYALTY WHEN
17 FARLEY WAS SO SURE THAT IT WOULD HAVE BEEN A LUMP SUM.

18 LET'S TALK ABOUT DESIGN AROUND.

19 MR. PARR SAID I RELIED ON DR. DEVANBU. YOU REMEMBER HE
20 RELIED ON PEOPLE FREQUENTLY WHEN THERE WAS TOUGH QUESTIONS.

21 AND HE SAYS DEVANBU TOLD HIM IN AN UNRECORDED
22 CONVERSATION, YOU'VE NEVER HEARD ANYTHING ABOUT, YOU HAVEN'T
23 SEEN NOTES ABOUT IT, WHY THESE THING HAPPEN OUTSIDE YOUR
24 PRESENCE, OUR PRESENCE, AND THEN GET RELIED ON FOR SOMETHING
25 THAT MR. PARR HAS TO ANSWER. BUT HE SAID, HE DIDN'T CONSIDER

1 DR. WICKER'S TESTIMONY ABOUT THE DESIGN AROUNDS.

2 IN FRONT OF US IN THE LAST TWO WEEKS, DR. DEVANBU TOOK A
3 PASS. I HAVEN'T FORMED AN OPINION ON THE CHOICES AVAILABLE TO
4 ADOBE. HE NEVER COMMENTED ON ALL OF THE SPECIFIC ALTERNATIVES
5 DR. WICKER SAID, AND SAID THAT DOESN'T MAKE SENSE, THAT WOULD
6 BE HARD, THAT'S EXPENSIVE, PEOPLE WOULDN'T LIKE THE PASSWORD
7 HERE OR THE SUBMISSION THERE.

8 NOW, IN SOME WAYS, I THINK THIS IS THE MOST OFFENSIVE
9 PIECE OF THE PUZZLE, WHICH IS THE ATTEMPT TO CAPTURE ALL OF
10 THE ACROBAT PRO REVENUE AND A WHOLE BUNCH OF OTHER REVENUE
11 THAT DOESN'T BELONG IN THIS CASE TO THE LIVECYCLE.

12 AND THE COURT, IT'S IN THE INSTRUCTIONS, SAYS METHOD
13 CLAIMS ARE ONLY INFRINGED WHEN THE PROCESS IS PERFORMED, NOT
14 BY THE SALE OF AN APPARATUS -- PATENT SPEAK FOR A THING AS
15 COMPARED TO AN ACTION -- THAT IS CAPABLE OF INFRINGING USE.

16 SO THE SALE OF THE PRODUCT ISN'T THE INFRINGEMENT, WHETHER
17 IT BE LIVECYCLE OR ANYTHING ELSE, IT'S THE ACTUAL USE OF THE
18 DRM PROCESS.

19 EVEN MORE IMPORTANT AND CENTRAL, AND, AGAIN, WE -- FOR ALL
20 OF THE PERSUASIVE REASONS THAT I AM SO PROUD OF MY PARTNER,
21 SONAL MEHTA, SHE PRESENTED, THERE'S NO WAY WE SHOULD BE
22 HEADING TO DAMAGES IF YOU HEARD THE SAME PRESENTATIONS I HEARD
23 AND THE COMPARISON AND THE FOCUS OF THE EVIDENCE.

24 BUT ASSUMING THAT YOU DO, AND FOCUSING ON THE CREDIBILITY
25 OF THE POINT, THAT'S WHERE I THINK IT'S ACTUALLY RELEVANT AND

CLOSING ARGUMENT - REINES

1 ENLIGHTENING, IF A PARTICULAR PRODUCT SOLD BY ADOBE IS NEVER
2 ENABLED TO BE USED, AN INFRINGING MANAGER, THERE IS NO
3 INFRINGEMENT AND SUCH UNITS OF PRODUCTS ARE NOT IN THE ROYALTY
4 BASE.

5 MR. PARR: OH, I JUST ASSUMED EVERYTHING WAS IN THE
6 ROYALTY BASE.

7 IT'S PRETTY GLIB. IT'S PRETTY GLIB FOR SOMEONE THAT PUTS
8 \$2 BILLION UP ON THE SCREEN AND THE NOTE HE TOOK ALL OF THE
9 ACROBAT PROFESSIONAL, EVERY SINGLE COPY THAT WAS SOLD IS ON
10 HIS CHART.

11 AND THE QUESTION WAS, DO YOU KNOW WHO ACTUALLY USED IT
12 WITH LIVECYCLE RIGHTS MANAGEMENT, WHICH YOU NEED TO DO TO
13 INFRINGE, YOU NEVER HEARD ANYBODY SAY THERE WAS ANY OTHER WAY?
14 NO.

15 I SAID: WILL YOU ACKNOWLEDGE THAT IF YOU DON'T USE THE
16 METHOD OF DRM, YOU ARE NOT INFRINGING EVEN IF THERE IS LATENT
17 CAPABILITY?

18 HE SAID: YEAH, THAT'S RIGHT.

19 THAT IS THE TRIAL TRANSCRIPT CITE 1052.

20 AND HIS ASSUMPTION WAS HE DIDN'T CARE IF THE PRODUCT WAS
21 EVER USED WITH DRM. HE FLAT IGNORING THE COURT'S INSTRUCTIONS
22 TO YOU. AS LONG AS IT WAS SOLVED, IT'S AN APPARATUS,
23 \$2 BILLION BASE.

24 THEN ASKED: WELL, WHAT INFRINGEMENT THEORY WOULD POSSIBLY
25 JUSTIFY INCLUDING ACROBAT PRO WHEN IT NEVER USES LIVECYCLE?

1 OTHERS HAVE TO PROVE THAT.

2 DR. DEVANBU DIDN'T PROVE THAT. HE SAID: WITH LIVECYCLE
3 RIGHTS MANAGEMENT ENABLED. THAT WAS HIS OWN ANSWER.

4 YOU SAW THE JURY INSTRUCTION THAT YOU'RE GOING TO GET THAT
5 SAYS IT HAS TO BE ENABLED IN ORDER FOR IT TO EVEN BE ELIGIBLE.
6 AND ALL HE SAID IS: THE INFRINGING IS LIVECYCLE RIGHTS
7 MANAGEMENT ENABLED.

8 AND THEN WE ASKED HIM THE \$15 MILLION-DOLLAR QUESTION: IN
9 TERMS OF THIS \$2 BILLION REVENUE BASE, DO YOU HAVE ANY IDEA
10 WHAT PORTION OF THOSE USERS MIGHT USE LIVECYCLE RIGHTS
11 MANAGEMENT?

12 NO. SOMEONE ELSE IS GOING TO TELL HIM SOMEWHERE. MAYBE
13 MR. FARLEY.

14 BUT WHEN HE WE PUT UP WITNESSES, THEY ANSWERED THE
15 QUESTION AS BEST THEY COULD, WHICH IS, THERE'S TENSE OF
16 MILLIONS OF COPIES OF ACROBAT PROFESSIONAL. THERE'S A COUPLE
17 OF HUNDRED INSTALLATIONS OF LIVECYCLE. TENSE OF MILLIONS,
18 COUPLE HUNDRED.

19 I'M SURE ADOBE WISHED MORE PEOPLE USED LIVECYCLE. I DON'T
20 USE IT. I DON'T KNOW IF ANY OF YOU HAVE EVER HEARD OF IT. I
21 HAVEN'T HEARD OF IT BEFORE THIS CASE. SUPER TINY.

22 SO THEY WANT SUPER TINY TO -- AND THEY'RE ASSUMING THAT
23 EVERYTHING IS USING IT. THE COURT IS GOING TO TELL YOU THAT'S
24 TOTALLY INAPPROPRIATE.

25 LIKE I SAID, I DON'T THINK YOU GET TO DAMAGES, BUT WHAT

CLOSING ARGUMENT - REINES

1 DOES THIS SAY ABOUT CREDIBILITY? THERE'S ALL THESE PRODUCTS
2 THAT YOU HEARD NOTHING ABOUT. THEY DIDN'T GIVE YOU THE
3 COURTESY. THEY WANT WHAT IS THAT 150, 2 MILLION FOR LC READER
4 EXTENSIONS? AND THEY DON'T MENTION IT?

5 JUST BECAUSE THEY PUT IT ON A BIG GRID, DOESN'T MEAN THAT
6 THEY'RE ENTITLED TO IT. IN FACT, THERE IS NO BASIS FOR THEM
7 BEING ENTITLED TO IT.

8 WHY ARE WE HERE? WE ARE HERE, I THINK, FROM THE DIG REG
9 PERSPECTIVE FOR THE REASONS STATED BY MR. FARLEY QUITE
10 CANDIDLY HERE, IT IS HIS VIEW THAT GREED IS AN EMOTION THAT HE
11 HAS, AND HE THINKS EVERYONE HAS IT.

12 WE DON'T HAVE TO LIVE IN A WORLD IN A PATENT SYSTEM WHERE
13 THE CULTURE IS THAT EVERYBODY'S GOT GREED, AND THAT'S OKAY.
14 AND I AM GOING TO COME IN COURT AND NOT EVEN BE EMBARRASSED,
15 AND SAY GREED'S THE EMOTION THAT MAYBE CAUSED ME TO PURSUE
16 THIS BUSINESS DEAL. AND WE ALL HAVE THAT.

17 I THINK THAT'S -- I DON'T WANT TO SPEAK TOO MUCH TO THAT,
18 BUT THAT'S KIND OF SPEAK FOR YOURSELF.

19 THEN FROM THE ADOBE PERSPECTIVE, WHY NOT JUST PAY 70,000,
20 80,000, 150, 200, 600, WHATEVER AMOUNT THEY ARE ASKING WHEN
21 THEY COME IN AND THEY WANT YOU TO -- IT'S GOING TO BE MILLIONS
22 TO LITIGATE. YOU'VE DONE IT BEFORE. YOU'VE PAID OFF OTHER
23 PEOPLE.

24 WE DO NOT INFRINGE. I HAVE SEEN A LOT OF CLOSING
25 ARGUMENTS IN MY DAY, AND THE ONE PUT ON BY MS. MEHTA WHERE SHE

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 WALKED SYSTEMATICALLY THROUGH THE REQUIREMENTS AND THE
2 EVIDENCE AND DEMONSTRATED BEYOND QUESTION THERE WAS NO
3 INFRINGEMENT AND, IN FACT, THESE PATENTS ARE INVALID.

4 YES, SOME PEOPLE ARE GOING TO SETTLE, BUT SOME PEOPLE ARE
5 GOING TO STAND UP. AND THAT IS WHAT ADOBE IS DOING IN THIS
6 CASE.

7 FAIRNESS DICTATES THAT THE APPEALS TO A SMALL COMPANY, THE
8 APPEALS TO THE CONSTITUTION, THE APPEALS TO GOING TO AN A'S
9 GAME WITH A BASEBALL GLOVE INSTEAD OF WATCHING THE GAME HOPING
10 YOU CATCH A BALL -- THAT'S NOT FAIRNESS. FAIRNESS IS LOOKING
11 AT THE EVIDENCE, MAKING THE RIGHT DETERMINATION, AND NOT
12 TREATING ADOBE AS SOMEHOW IMPROPER FOR ITS DAY IN COURT TO SAY
13 WE'RE TAKING A STAND THIS TIME. AND EVERYONE ELSE CAN PAY,
14 WE'RE NOT PAYING.

15 THANK YOU VERY MUCH FOR YOUR ATTENTION. YOU HAVE BEEN AN
16 INCREDIBLY ATTENTIVE JURY. AND I THANK YOU VERY MUCH.

17 **REBUTTAL CLOSING ARGUMENT**

18 **MR. ELLWANGER:** MAY IT PLEASE THE COURT?

19 IT WAS AN AWFUL LONG CLOSING ARGUMENT TO NOT SHOW YOU ANY
20 ADOBE DOCUMENTS, TO NOT WALK THROUGH THE VERY WORDS THAT ADOBE
21 PUTS ON PAPER TO TALK ABOUT HOW ITS PRODUCTS WORK.

22 THEY DID TALK A LOT ABOUT THE TESTIMONY. AND I DON'T WANT
23 TO LEAVE THAT UNREBUTTED BECAUSE THERE ARE SOME PIECES OF THE
24 TESTIMONY THAT THEY DIDN'T DISCUSS WITH YOU, AND I WANT TO
25 MAKE SURE YOU HAVE THIS INFORMATION BEFORE YOU GO BACK INTO

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 THAT JURY ROOM.

2 WE ARE GOING TO GO CHRONOLOGICALLY THROUGH A FEW KEY
3 POINTS FROM THE CLOSING.

4 FIRST OFF, REGARDING THE TOKEN AND FLASH, DR. DEVANBU
5 TESTIFIED THAT HE DIDN'T CONSIDER THE TERM "YES OR NO".

6 SORRY, I'VE GOT TO GET OLD FASHION HERE, BUT THIS IS FROM
7 THE SLIDE YOU JUST SAW.

8 THE QUESTION WAS: DOES THAT CONSTRUCTION INCLUDE THE
9 TERM, THE LANGUAGE "YES OR NO", AND IT DOESN'T. THEY DON'T
10 USE ENGLISH TERMS LIKE THAT IN COMPUTER CODE.

11 THE COURT HAS INSTRUCTED YOU ABOUT A YES/NO INDICATOR.
12 AND ONCE AGAIN, SAME HIGHLIGHTING ISSUE CAME UP DURING THAT
13 CLOSING ARGUMENT.

14 HERE'S ADOBE'S SLIDE. WELL, THEY HIGHLIGHTED THAT FIRST
15 SENTENCE IN YELLOW AND THEY HIGHLIGHTED THE LAST SENTENCE IN
16 YELLOW, BUT THEY LEFT OUT THE MIDDLE SENTENCE. THE ONE I
17 HIGHLIGHTED IN ORANGE. I WANT YOU TO FOCUS ON THIS ONE FOR
18 JUST A MOMENT.

19 THE COURT INSTRUCTED, I WANTED TO EXPLAIN THAT I
20 INTERPRETED THE TERM "TOKEN" AS YOU WILL SEE IN YOUR PAPERS TO
21 MEAN A FILE INDICATING WHETHER THE TRANSACTION HAS BEEN
22 APPROVED AND ACCESS SHOULD BE GRANTED.

23 SO LET'S LOOK AT THE TESTIMONY. PAGE 494, LINE 16,
24 DR. DEVANBU WAS ASKED:

25 "OKAY, SIR, BUT AT LEAST AS FAR AS THE TERM "TOKEN"

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 THAT HAS BEEN CONSTRUED BY THE COURT, DID YOU APPLY
2 OR IS YOUR ANALYSIS CONSISTENT WITH THE COURT'S CLAIM
3 CONSTRUCTION FOR TOKEN?

4 "ANSWER: YES, IT IS."

5 PAGE 510.

6 "ANSWER: THE EXTERNAL SOURCE PROVIDES A LICENSED
7 TOKEN WHICH CONTAINS INFORMATION THAT ALLOWS THE
8 CLIENT TO DECIDE WHETHER OR NOT TO GRANT ACCESS."

9 YOU SEE, ADOBE KEEPS DIRECTING YOUR ATTENTION TO THINGS
10 GOING ON AT THE SERVER. BUT AS YOU SEE FROM THE CLAIMS, THE
11 '541 IS FOCUSED ON THE CLIENT.

12 DR. DEVANBU EXPLAINED THAT WHAT IS TRANSMITTED IS USED AS
13 AN INPUT TO GENERATE THE PERMISSION AT THE CLIENT.

14 THE TOKEN ISN'T THE PERMISSION. THEY MUST BE DIFFERENT.
15 SO IN THE '541 PATENT AND THE ACCUSED PRODUCTS, THEY ARE.

16 IN LIVECYCLE, THE TOKEN IS AN ENCRYPTED VOUCHER. THE
17 ENCRYPTED VOUCHER INCLUDES A KEY AND A SERIES OF PERMISSIONS.
18 IT'S USELESS IF IT'S INTERCEPTED. THAT'S THE WHOLE POINT,
19 RIGHT? THE KEY AND THE PERMISSIONS, WELL THOSE ARE GENERATED
20 AT THE CLIENT.

21 DR. WICKER CONCEDED THAT DIGITAL OBJECTS CAN BE
22 REGENERATED.

23 ON THE FLASH PRODUCT THERE, AS I SAID BEFORE, THE TOKEN IS
24 A LICENSE FILE. IT HAS AN ENCRYPTED KEY AND PERMISSIONS.
25 AND, AGAIN, IT'S USELESS IF IT IS INTERCEPTED. IT HAS TO BE

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 PROCESSED AND DECRYPTED BEFORE BEING STORED.

2 AND I MIGHT ADD, THAT STEP ISN'T PRESENT IN THE SCHULL
3 PATENT.

4 AND, AGAIN, MEMBERS OF THE JURY, I APOLOGIZE, I'M JUST
5 READING FROM TRANSCRIPT PAGES, BUT I WANT YOU TO CONSIDER THIS
6 TESTIMONY ALONG WITH WHAT YOU JUST HEARD.

7 DR. WICKER, ADOBE'S EXPERT, ADMITTED ON CROSS-EXAMINATION
8 THAT THE TOKEN ISN'T THE KEY BUT IT'S THE PERMISSIONS AND IT
9 CONTAINS THE SET OF PERMISSIONS.

10 AND, FOR EXAMPLE, THE PERMISSIONS INCLUDE THAT YES/NO
11 INDICATOR AND THAT THE USER COULD, FOR EXAMPLE, ACCESS THE
12 ABILITY TO PRINT.

13 WE'RE UP TO PAGE 758, LINE 2, OF THE WICKER
14 CROSS-EXAMINATION BY MR. DINOV.

15 SO, FOR EXAMPLE, IT WOULD GIVE A YES OR A NO INDICATION AS
16 TO WHETHER THAT USER COULD PRINT, RIGHT?

17 THAT WOULD BE AN EXAMPLE OF THE RIGHTS, HE ANSWERED. THAT
18 WOULD BE EITHER ALLOWED OR DISALLOWED. THAT'S CORRECT.

19 PAGE 773, LINE 2. SO THE SET OF PERMISSIONS IS NOT THE
20 EDC VOUCHER?

21 "ANSWER: THE EDC VOUCHER CONTAINS THE PERMISSIONS.

22 AND PERMISSIONS ORIGINATE AT THE SERVER. THEY ARE
23 EXTRACTED OR OBTAINED FROM THE OBJECT THAT IS
24 DECRYPTED AT THE CLIENT."

25 YOU WERE ALSO WALKED THROUGH A DISCUSSION, ONCE AGAIN, OF

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 THESE SCHULL PATENTS -- THE SCHULL PATENT, EXCUSE ME. AND
2 HOW, BECAUSE OF THAT PATENT, THE '541 AND THE '670 PATENT,
3 THEY SHOULD JUST BE INVALIDATED. PATRICK PATTERSON'S PATENTS
4 SHOULD BE TAKEN AWAY.

5 BUT REMEMBER THAT SCHULL GENERATES A PASSWORD AT THE
6 SERVER. PASSES IT IN THE SAME FORM AND STORES IT IN THE SAME
7 FORM. PROFESSOR SCHULL, DR. WICKER, AND DR. KELLER ALL AGREED
8 ABOUT THAT.

9 ADOBE, ON THE OTHER HAND, PASSES AN ENCRYPTED TOKEN,
10 DECRYPTS AND EXTRACTS THE KEYS AND PERMISSIONS, AND THEN THOSE
11 DECRYPTED PERMISSIONS ARE STORED. WHAT'S STORED IS NOT WHAT
12 IS TRANSMITTED BECAUSE THAT MUST BE GENERATED AT THE CLIENT.
13 DR. DEVANBU AND DR. WICKER AGREED.

14 AND ONE MORE POINT ON DR. SCHULL. HE SEEMED LIKE AN
15 ABSOLUTELY GREAT MAN. I DON'T HAVE ANY QUibble WITH WHO HE IS
16 AS A PERSON, BUT HIS PATENT DOESN'T DO EXACTLY WHAT THESE
17 PATENTS DO.

18 AND, YOU KNOW, HIS COMPANY, IT WENT BANKRUPT AFTER THE
19 BUBBLE BURST, TOO. HIS COMPANY DOESN'T EXIST ANYMORE EITHER.
20 BUT IT DOESN'T MEAN, AS HE SAID, THAT HIS TECHNOLOGY WASN'T
21 SOUND. THE SAME IS TRUE FOR THE '541 AND THE '670 PATENTS.

22 THE FINAL EVIDENTIARY POINT I WANT TO GET TO BEFORE WE
23 DISCUSS CREDIBILITY IS ABOUT THE TIME LINE AND MR. HERBACH
24 FILING THESE LIVECYCLE PATENTS. HIS FIRST PATENT ON HALLOWEEN
25 2003.

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 WELL, THE PROBLEM WITH THAT IS THAT THIS CASE IS ABOUT
2 LIVECYCLE RIGHTS MANAGEMENT. AND LIVECYCLE RIGHTS MANAGEMENT,
3 THAT DIDN'T COME AROUND UNTIL 2005. THAT'S WHAT HE TESTIFIED
4 TO.

5 AND ON DAMAGES, IN ORDER TO THINK ABOUT THESE, AGAIN,
6 SMALLER SETTLEMENTS THAT THEY PUT OUT, OR THIS HUNDRED
7 THOUSAND DOLLAR WORK-AROUND THAT YOU HEARD TESTIMONY ABOUT, DO
8 YOU THINK DIGITAL REG WOULD AGREE TO THAT IF YOU HAD ALREADY
9 FOUND INFRINGEMENT? IF YOU HAD ALREADY FOUND VALIDITY?

10 ALL THOSE LICENSE AGREEMENTS THAT YOU HEARD ABOUT, THOSE
11 WERE ALL NEGOTIATED WITHIN THE CONTEXT OF PENDING INFRINGEMENT
12 CLAIMS, AND PENDING VALIDITY CLAIMS, AND ALL A FIGHT LIKE
13 THIS. THAT'S NOT THE HYPOTHETICAL NEGOTIATION. THAT OCCURS
14 AFTER A JURY LIKE YOU WOULD HAVE FOUND INFRINGEMENT AND FOUND
15 VALIDITY, AND THOSE NUMBERS ARE DIFFERENT.

16 NOW, HE TOLD YOU THAT WE ACCUSED \$2 BILLION WORTH OF
17 PRODUCT AND DIDN'T REALLY WANT TO TALK ABOUT THE FACT THAT WE
18 SLICED 70 PERCENT OFF TO FOLLOW THE INDUSTRY STANDARD.

19 AND THE OTHER THING THAT YOU DIDN'T HEAR IS THAT THE
20 REASON WE ACCUSED \$2 BILLION WORTH OF PRODUCT IS BECAUSE THAT
21 PRODUCT ALL CONTAINS THE CODE. IT CONTAINS THAT
22 FUNCTIONALITY. IT INFRINGES.

23 NOW I WANT TO TALK TO YOU -- I FEEL LIKE I OWE YOU --

24 **MR. REINES:** OBJECTION, YOUR HONOR. THE ARGUMENT
25 THAT WAS JUST MADE IS THAT IT'S IN THE CODE AND THAT IT EXISTS

REBUTTAL CLOSING ARGUMENT - ELLWANGER

1 AND IT'S INFRINGING FOR \$2 BILLION WORTH OF PRODUCT. THAT IS
2 COUNTER FACTUAL AND COUNTER LEGAL.

3 **THE COURT:** WELL, THE INSTRUCTIONS WILL GUIDE THE
4 JURY IN THEIR CONSIDERATION OF THESE ARGUMENTS.

5 **MR. ELLWANGER:** ADOBE'S LAWYER'S RIGHT. WHEN I WAS
6 11, I PROBABLY DID FOCUS MORE ON TRYING TO CATCH A BALL THAN
7 WATCHING THE GAME.

8 BUT ON SEPTEMBER 26TH, 1987, AT THE COLISEUM ON REGGIE
9 JACKSON DAY, HAROLD BANES HIT A BALL THAT WAS FOULED DOWN THE
10 RIGHT FIELD LINE AND RATTLED AROUND THE BULL PIN, AND HE
11 ACTUALLY FLIPPED IT UP INTO THE STANDS. AND I REMEMBER THE
12 BALL KIND OF BLOCKING OUT THE SUN, THAT AFTERNOON SUN, AND I
13 WILL NEVER FORGET THE FEEL OF IT HITTING MY GLOVE. AND THE
14 LOOK ON MY DAD'S FACE WHEN I WALKED BACK TO OUR SEATS AND
15 SHOWED HIM.

16 AND THE FUNNY THING ABOUT MEMORIES IS, I WILL NEVER FORGET
17 CATCHING A BASEBALL AT AN A'S GAME AND I WILL NEVER FORGET
18 THAT FEELING AND I WILL NEVER FORGET WHAT IT LOOKED LIKE GOING
19 INTO MY GLOVE, BUT TO BE HONEST WITH YOU, I FORGOT THE DATE.

20 I HAD TO LOOK UP IN THE BASEBALL ALMANAC WHEN REGGIE
21 JACKSON DAY WAS SO I COULD REMEMBER THE DATE. AND I ALSO
22 HADN'T REMEMBERED THAT THE A'S LOST 4 TO 3, TWO RUNS GIVEN UP
23 IN THE NINTH BY ERIC CLUNK. I HAD TO REFRESH MY RECOLLECTION
24 ON THAT ONE. I BET I REMEMBERED IT WHEN I WAS 11.

25 THE POINT IS, YOU CAN REMEMBER REALLY IMPORTANT THINGS IN

1 YOUR LIFE, THINGS THAT YOU CARRY WITH YOU FOR YOUR WHOLE LIFE,
2 AND IT DOESN'T ALWAYS MEAN THAT YOU REMEMBER THE DATE OR THE
3 SCORE OR WHO THE LOSING PITCHER WAS. BUT IT DOESN'T CHANGE
4 THE FACT THAT IT HAPPENED.

5 JURORS ARE INCREDIBLE -- THEY ARE INCREDIBLE PEOPLE AT
6 JUDGING CHARACTER. JURORS ARE VERY GOOD ABOUT BEING ABLE TO
7 ASCERTAIN WHAT'S REAL AND WHAT'S NOT.

8 AND WHEN YOU THINK BACK TO THE TESTIMONY OF PATRICK
9 PATTERSON, AND THOSE NIGHTS WORKING LATE AT FISH & RICHARDSON,
10 PROVING TO THOSE LAWYERS THEY WERE HELPING WRITE HIS PATENT
11 WHETHER HIS INVENTION WORKED, I THINK YOU CAN BELIEVE THAT.

12 AND WHEN MR. VENTERS ADMITTEDLY DID TALK ABOUT VERSION
13 AFTER VERSION, 12 DIFFERENT VERSIONS OF THIS ADOBE VALUE
14 PROPOSITION THAT HE WORKED ON, HIS TEAM WORKED ON, THIS WAS AN
15 IMPORTANT CHANCE FOR THEM TO TRY AND LICENSE THEIR TECHNOLOGY,
16 WHEN THEY KNEW THEY COULDN'T BUILD ON THE SCALE OF ADOBE.
17 ADOBE'S POSITION IS THAT HE JUST COMPLETELY MADE ALL THAT UP?

18 YOU CAN JUDGE CHARACTER. AND YOU CAN JUDGE TESTIMONY.
19 YOU CAN LOOK AT THE CODE. YOU CAN LOOK AT THE DOCUMENTS. YOU
20 CAN LOOK AT THE CLAIMS. WHEN YOU ARE TRYING TO REMEMBER WHAT
21 ADOBE KNEW AND WHEN ADOBE KNEW IT, DON'T FORGET THIS
22 TESTIMONY. DON'T FORGET THAT IN ADOBE'S OWN PATENT
23 APPLICATIONS, YOU HAVE THESE PATENTS DISCLOSED BY THE PATENT
24 OFFICE. THE '670 AND THE '541.

25 WOULD YOU LOOK AT THAT? THEY EVEN USED OUR LAW FIRM.

1 MEMBERS OF THE JURY, AT THE BEGINNING OF THIS TRIAL I TOLD YOU
2 THAT DIGITAL REG WOULD PROVE THREE THINGS BECAUSE WE KNEW THAT
3 THE EVIDENCE WOULD SHOW YOU BY NOW WHAT WE KNEW THEN.

4 FIRST, ADOBE INFRINGES THE '541 AND '670 PATENT, AND THEY
5 DID SO WILLFULLY.

6 SECOND, PATRICK PATTERSON INVENTED THE '541 AND THE '670
7 PATENTS JUST LIKE THE U.S. PATENT OFFICE SAID HE DID.

8 AND THIRD, ADOBE OWES ROYALTIES FOR USING THESE INVENTIONS
9 AND NOT PAYING FOR THEM.

10 WE ASK THAT YOU FOLLOW THE CODE, YOU FOLLOW THE DOCUMENTS,
11 YOU FOLLOW THE CLAIMS, AND YOU FIND FOR DIGITAL REG.

12 **THE COURT:** ALL RIGHT, LADIES AND GENTLEMEN, IN A
13 MOMENT I WILL EXCUSE YOU TO BEGIN YOUR DELIBERATIONS. WHEN
14 YOU DO THAT YOU SHOULD ELECT ONE MEMBER OF THE JURY AS YOUR
15 FOREPERSON. THAT PERSON WILL RESIDE OVER YOUR DELIBERATIONS
16 AND SPEAK FOR YOU HERE IN COURT.

17 YOU WILL THEN DISCUSS THE CASE WITH YOUR FELLOW JURORS TO
18 REACH AGREEMENT, IF YOU CAN DO SO. YOUR VERDICT MUST BE
19 UNANIMOUS. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT
20 YOU SHOULD DO SO ONLY AFTER YOU HAVE CONSIDERED ALL THE
21 EVIDENCE, DISCUSSED IT FULLY WITH THE OTHER JURORS, AND
22 LISTENED TO THE VIEWS OF YOUR FELLOW JURORS.

23 DO NOT BE AFRAID TO CHANGE YOUR OPINION IF THE DISCUSSION
24 PERSUADES YOU THAT YOU SHOULD. BUT DO NOT COME TO A DECISION
25 SIMPLY BECAUSE THE OTHER JURORS THINK IT IS RIGHT.

1 IT IS IMPORTANT THAT YOU ATTEMPT TO REACH A UNANIMOUS
2 VERDICT, BUT OF COURSE ONLY IF EACH OF YOU CAN DO SO AFTER
3 HAVING MADE YOUR OWN CONSCIENTIOUS DECISION. DO NOT CHANGE AN
4 HONEST BELIEF ABOUT THE WEIGHT AND EFFECT OF THE EVIDENCE
5 SIMPLY TO REACH A VERDICT.

6 IF IT BECOMES NECESSARY DURING YOUR DELIBERATIONS TO
7 COMMUNICATE WITH ME, YOU MAY SEND A NOTE THROUGH THE CLERK OR
8 THROUGH THE MARSHAL WHO WILL BE STATIONED OUTSIDE YOUR DOOR,
9 SIGNED BY YOUR FOREPERSON OR BY ONE OR MORE MEMBERS OF THE
10 JURY. NO MEMBER OF THE JURY SHOULD EVER ATTEMPT TO
11 COMMUNICATE WITH ME EXCEPT BY A SIGNED WRITING, AND I WILL
12 RESPOND TO THE JURY CONCERNING THE CASE ONLY IN WRITING OR
13 HERE IN OPEN COURT.

14 IF YOU SEND OUT A QUESTION, I WILL CONSULT WITH THE
15 LAWYERS BEFORE ANSWERING IT, WHICH MAY TAKE SOME TIME. YOU
16 MAY CONTINUE YOUR DELIBERATIONS WHILE WAITING FOR THE ANSWER
17 TO ANY QUESTION.

18 REMEMBER THAT YOU ARE NOT TO TELL ANYONE, INCLUDING ME,
19 HOW THE JURY STANDS NUMERICALLY OR OTHERWISE UNTIL AFTER YOU
20 HAVE REACHED A UNANIMOUS VERDICT OR HAVE BEEN DISCHARGED. DO
21 NOT DISCLOSE ANY VOTE COUNT IN ANY NOTE TO ME.

22 A VERDICT FORM HAS BEEN PREPARED FOR YOU AS I READ TO YOU
23 EARLIER. WE WILL SEND BACK A SCRATCH COPY FOR EACH OF YOU OF
24 THAT FORM AND THEN THE ORIGINAL THAT YOU WILL BE RETURNING.

25 AFTER YOU'VE REACHED A UNANIMOUS AGREEMENT ON THE VERDICT,

1 YOUR FOREPERSON WILL FILL IN THE FORM, SIGN IT, AND DATE IT,
2 AND ADVISE THE COURT THROUGH THE MARSHAL THAT YOU ARE READY TO
3 RETURN TO THE COURTROOM.

4 AS SOON AS WE GET THE FINAL COPY FINALIZED, WE WILL GIVE
5 YOU EACH A COPY OF THE FINAL JURY INSTRUCTIONS. MS. RILEY
6 WILL COLLECT FROM YOU THE PRELIMINARY JURY INSTRUCTIONS. AND
7 AS I SAID EARLIER, THOSE WERE INCOMPLETE AND SOMEWHAT SUBJECT
8 TO CHANGE. WE WILL TAKE THOSE BACK SO YOU DON'T GET CONFUSED
9 WITH THEM, AND YOU WILL USE THE FINAL JURY INSTRUCTIONS.

10 AS SOON AS WE GET THEM FINALIZED AS WELL, WE WILL SEND
11 BACK THE STACK OF EXHIBITS THAT YOU WILL BE ABLE TO LOOK AT.

12 I UNDERSTAND THAT AT LEAST ONE OF YOUR JURORS IS NOT ABLE
13 TO STAY PASSED 1:30 TODAY, SO YOU WILL NEED TO RECESS AT
14 1:30 IF THERE IS SOMEONE WHO CAN'T STAY. IF THAT'S THE CASE,
15 THEN YOU PROBABLY SHOULDN'T GO OUT TO LUNCH BECAUSE THAT WOULD
16 GET YOU BACK HERE AFTER 1:30. SO WE WILL USE OUR USUAL
17 SCHEDULE IF SOMEONE DOES NEED TO LEAVE.

18 IF THAT'S THE CASE AND YOU HAVEN'T REACHED A VERDICT BY
19 THAT TIME, YOU WILL NEED TO COME BACK TOMORROW MORNING.

20 YOU HAVE ANOTHER JUROR WHO HAS AN OBLIGATION IN THE
21 MORNING AND WHO, GIVEN TRAFFIC AND ALL, MAY NOT BE ABLE TO BE
22 HERE UNTIL NINE TOMORROW. SO JUST SO YOU AREN'T HERE WAITING
23 FOR ANYONE, I WILL HAVE YOU COME BACK TOMORROW AT 9:00 O'CLOCK
24 INSTEAD OF 8:30. YOU WILL NEED, IF THAT JURY IS DELAYED MORE
25 THAN EXPECTED, YOU WILL NEED TO WAIT FOR THAT JUROR AND DON'T

1 START TALKING ABOUT THE CASE. YOU CAN TALK ABOUT THE BASEBALL
2 OR WHATEVER YOU LIKE UNTIL THAT TIME.

3 AND WHEN ALL THE JURORS ARE PRESENT AT 9:00 O'CLOCK OR
4 BEFORE OR AFTER THAT, THEN YOU CAN START DELIBERATING AGAIN.
5 AND, AGAIN, YOU HAVE A JUROR WHO CANNOT STAY PAST 1:30. I
6 WOULD ASK YOU ALL TO GIVE IT ANOTHER SHOT AND SEE IF YOU MIGHT
7 COULD STAY A BIT LONGER BECAUSE IF YOU DON'T FINISH ON FRIDAY,
8 YOU WILL NEED TO COME BACK AT 8:30 ON MONDAY MORNING TO
9 CONTINUE DELIBERATING.

10 SO WITH THAT, I WILL EXCUSE YOU TO BEGIN YOUR
11 DELIBERATIONS.

12 I AM SORRY, ONE MORE THING. WE HAVE THE MARSHAL HERE I
13 MENTIONED WILL BE OUTSIDE YOUR DOOR.

14 STEP FORWARD PLEASE, SIR, AND BE SWORN.

15 (COURT SECURITY OFFICER SWORN.)

16 **THE COURT:** YOU CAN GO AROUND THE OTHER WAY THROUGH
17 THE HALLWAY AND BE STATIONED OUTSIDE THE JURY ROOM DOOR.

18 I WON'T SPEAK WITH YOU AGAIN AT 1:30. IF YOU LEAVE AT
19 THAT POINT OR SHORTLY THEREAFTER AND HAVEN'T REACHED A
20 VERDICT, BUT REMEMBER ONCE YOU HAVE LEFT THE JURY ROOM, YOU
21 SHOULD NOT DISCUSS THE CASE EVEN AMONGST A FEW OF YOU OR WITH
22 ANYONE ELSE NOR SHOULD YOU DO ANY INVESTIGATION ABOUT THE CASE
23 ON YOUR OWN.

24 LEAVE YOUR NOTES AND THE INSTRUCTION FORMS AND, OF COURSE,
25 THE EVIDENCE IN THE JURY ROOM IN THE EVENING WHEN YOU LEAVE.

1 SO, WITH THAT, THEN YOU MAY RECESS TO BEGIN YOUR
2 DELIBERATIONS.

3 (JURORS BEGIN DELIBERATIONS.)

4 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

5 **THE COURT:** I WOULD LIKE TO SPEAK WITH THE ATTORNEYS
6 FOR A MOMENT.

7 I MEANT TO ASK YOU THIS BEFORE I READ IT, SO I HAD TO READ
8 IT THE WAY IT WAS, ON PAGE 20 THERE'S AN INSTRUCTION THAT SAYS
9 "THE EFFECT OF SELLING THE PATENTED SPECIALTY IN PROMOTING
10 SALES".

11 I DON'T KNOW WHAT A PATENTED SPECIALTY IS AND I WOULD LIKE
12 TO CHANGE IT TO SOMETHING UNDERSTANDABLE IN THE WRITTEN
13 VERSION. SO IF SOMEONE CAN OFFER ME A SYNONYM FOR PATENTED
14 SPECIALTY, I WOULD APPRECIATE IT.

15 **MR. REINES:** THIS IS IN THE GEORGIA-PACIFIC FACTORS?

16 **THE COURT:** I DON'T KNOW. IT'S ON PAGE 20, FACTOR 6,
17 LINE 3. IT WAS IN YOUR PROPOSED INSTRUCTIONS, I BELIEVE. AND
18 I MEANT TO ASK BUT I FORGOT.

19 **MR. REINES:** I THINK I AM COMFORTABLE INCLUDING
20 INVENTION IN THERE. I'M SURE COUNSEL WILL AGREE WITH THAT.

21 **THE COURT:** EFFECT OF SELLING THE INVENTION?

22 **MR. DINOVO:** PATENTED INVENTION, I GUESS.

23 **THE COURT:** PATENTED INVENTION?

24 **MR. REINES:** YES.

25 **THE COURT:** OKAY.

1 SO I'M GOING TO MAKE THAT AND A COUPLE OF OTHER TYPOS I
2 CAUGHT AS I WAS READING THEM. AND THEN I WILL MAKE COPIES FOR
3 THEM, I'LL E-FILE THEM AND MAKE COPIES FOR YOU. I FIXED THE
4 NUMBERING ISSUE ON THE VERDICT FORM AND E-FILE THAT AND MAKE
5 COPIES FOR THEM AND FOR YOU.

6 I STILL WILL NEED TO SEE THAT CODE EXHIBIT BEFORE WE CAN
7 SEND THE EXHIBITS BACK.

8 AND AS I SAY, YOU WILL NEED TO LEAVE CELL PHONES THAT YOU
9 HAVE ON AND RINGING -- YOU WOULD BE SURPRISED HOW MANY PEOPLE
10 DON'T -- WITH MS. RILEY SO SHE CAN REACH YOU. SHE WILL LET
11 YOU KNOW IF THEY DO LEAVE AT 1:30, SHE WILL LET YOU KNOW SO
12 YOU CAN LEAVE AS WELL. AND THEN YOU NEED TO BE BACK AGAIN ON
13 CALL AS OF 9:00 O'CLOCK TOMORROW MORNING UNTIL YOU HEAR
14 OTHERWISE FROM US.

15 **MS. GLAUSER:** YOUR HONOR, FOR PURPOSES OF THE
16 APPELLATE RECORD, SHOULD IT BE NECESSARY, WE WOULD LIKE TO
17 OFFER THE ORIGINAL 175A, B AND C AS AN OFFER OF PROOF THAT
18 CONTAINS THE SOURCE CODE PAGES THAT WE THINK ARE NECESSARY TO
19 SUPPORT DR. DEVANBU'S TESTIMONY.

20 **THE COURT:** OKAY.

21 **MS. GLAUSER:** SO, IF WE CAN PROVIDE THOSE. WE DON'T
22 HAVE ELECTRONIC COPIES BECAUSE PURSUANT TO THE PROTECTIVE
23 ORDER, WE ARE NOT ALLOWED TO SCAN IT, SO IT WOULD BE -- I
24 DON'T KNOW HOW YOU WOULD LIKE TO HANDLE THAT PROCEDURALLY
25 BECAUSE THE OTHER SIDE HAS ASKED US TO ONLY SUBMIT THEM

1 MANUALLY.

2 **THE COURT:** WELL, THAT'S NOT SOMETHING WE HAVE TO
3 RESOLVE RIGHT THIS SECOND. THAT'S YOUR OFFER OF PROOF. I
4 GUESS YOU WANT THE WHOLE BOOK IN FOR THE NINTH CIRCUIT'S
5 BENEFIT? DO YOU HAVE SOMETHING YOU WANT TO GO TO THE JURY?

6 **MS. GLAUSER:** YES, YOUR HONOR. WE ARE CURRENTLY
7 PREPARING SOMETHING THAT IS ACCOMMODATING TO YOUR INSTRUCTIONS
8 OF JUST THE LINES. WE JUST WANTED TO RESERVE FOR THE
9 APPELLATE RECORD TO EITHER HAVE THE PAGES WE ORIGINALLY
10 SUBMITTED, OR THAT ALTERNATIVELY THE DEMONSTRATIVES THAT
11 DR. DEVANBU USED.

12 **THE COURT:** WELL, THAT'S EASY. YOU WOULD BE
13 SATISFIED FOR YOUR OFFER OF PROOF PURPOSES THAT WE USE THE
14 DEMONSTRATIVES?

15 **MS. GLAUSER:** WE WOULD AS AN ALTERNATIVE, YOUR HONOR.

16 **THE COURT:** YOU WANT THOSE UNDER SEAL AS WELL?

17 **MS. GLAUSER:** THOSE WERE ADMITTED IN OPEN COURT.

18 **MR. REINES:** IT'S CODE FOR THE KEYS TO UNLOCK DRM.

19 **THE COURT:** IF YOU WANT IT, YOU WANT IT. I DON'T
20 CARE.

21 **MR. REINES:** YES.

22 **THE COURT:** BUT AT LEAST IT'S DIGITAL SO WE CAN PUT
23 IT UNDER SEAL DIGITALLY INSTEAD OF HAVING PIECES OF PAPER
24 FLOATING AROUND.

25 **MS. GLAUSER:** YES, YOUR HONOR.

1 **THE COURT:** YOU MAY SUBMIT A SEALING ORDER AND FILE
2 THOSE AND I'LL SIGN A SEALING ORDER THAT THOSE CAN BE FILED
3 UNDER SEAL AS AN OFFER OF PROOF AND THEN THE PART THAT'S
4 ACTUALLY GOING TO THE JURY, TRY TO GET IT AS SOON AS YOU CAN
5 BECAUSE THEY START GETTING ANTSY ABOUT GETTING THEIR COPIES.

6 SHOW IT TO THE OTHER SIDE FIRST AND THEN GIVE IT TO
7 MS. RILEY.

8 **MS. GLAUSER:** WE ARE.

9 **MR. REINES:** THANK YOU, YOUR HONOR. WE APPRECIATE
10 IT.

11 **THE CLERK:** I NEED A CONTACT PERSON FOR EACH SIDE.

12 (RECESS TAKE AT 12:26 P.M.; RESUMED AT 2:05 P.M.)

13 (PROCEEDINGS HELD OUTSIDE THE PRESENCE OF THE JURY.)

14 **THE COURT:** PLEASE BE SEATED.

15 WE ARE GOING TO CALL DIGITAL REG FIRST, SO YOU ALL CAN
16 COME UP.

17 **THE CLERK:** WE ARE CALLING C-12-1971, DIGITAL REG OF
18 TEXAS, LLC VERSUS ADOBE SYSTEMS INCORPORATED, ET AL.

19 PLEASE STATE YOUR APPEARANCES.

20 **MS. GLAUSER:** NICKI GLAUSER WITH DINOVOPRICE
21 ELLWANGER ON BEHALF OF DIGITAL REG.

22 **MR. REINES:** EDWARD REINES ON BEHALF OF ADOBE.

23 **THE COURT:** SO THIS IS JUST NOT WHAT I WAS PICTURING.
24 WHAT IS ADOBE'S VIEW OF THIS?

25 **MR. REINES:** WELL, WE CERTAINLY DON'T WANT THE

1 DEMONSTRATIVES TO GO IN. AND IN TERMS OF THE BULK SOURCE
2 CODE, I DON'T KNOW HOW THEY CAN POSSIBLY MAKE SENSE OF IT. IT
3 WASN'T REFERRED TO IN EXAMINATION. THERE IS NO DISPUTE ABOUT
4 THE FUNCTIONING OF THE PRODUCT IN ANY MATERIAL WAY BASED ON
5 WHAT WE HEARD IN CLOSE.

6 I JUST I DON'T SEE THE BASIS FOR THROWING THAT ALL INTO
7 THE JURY ROOM.

8 **THE COURT:** BUT APART FROM THAT, DO YOU HAVE A
9 DISAGREEMENT -- I MEAN, DO YOU FIND IT PREJUDICIAL IN SOME
10 WAY? ARE YOU CONCERNED ABOUT IT? IS IT JUST SORT OF A
11 BURDENSONESS ISSUE?

12 **MR. REINES:** WELL, DEPENDS ON WHICH TENDER WE ARE
13 TALKING ABOUT. TO THE --

14 **THE COURT:** THE CURRENT THING, I GUESS, IS WE HAVE
15 THIS THING THAT'S ABOUT MAYBE A HALF INCH THINK THAT
16 APPARENTLY DIGITAL REG IS REPRESENTING CONTAINS ONLY THE CODE
17 THAT WAS ACTUALLY PLACED ON THE DEMONSTRATIVES THAT WERE SHOWN
18 TO THE JURY. AND THEN, TO BACK THAT UP, ALTHOUGH I HAVEN'T
19 FULLY BEEN ABLE TO SEE WHETHER IT IS BACKED UP. TO BACK THAT
20 UP, I HAVE APPARENTLY ALL OF THE DEMONSTRATIVES THAT DEVANBU
21 USED FROM WHICH ONE COULD, ONE HOPES, LOOK AND SEE IF THIS IS
22 ALL THERE.

23 SO, THEIR CURRENT NOTION IS TO FILE ALL OF THE
24 DEMONSTRATIVES AS AN OFFER OF PROOF ABOUT THE EVEN LARGER
25 EXHIBIT THAT I WOULDN'T ALLOW AND TO GIVE TO THE JURY THIS

1 HALF-INCH THICK EXHIBIT THAT SUPPOSEDLY HAS ONLY THE CODE THAT
2 WAS IN THE DEMONSTRATIVES.

3 THAT IS WHAT WE ARE TALKING ABOUT. TO ME, THIS IS STILL
4 TOO BIG. IF YOU HAD SOME KIND OF PREJUDICE ARGUMENT ABOUT IT
5 I WOULD LISTEN TO THAT. OTHERWISE, I WILL JUST CONSIDER THE
6 BURDENSONESS ARGUMENT FOR THE JURY.

7 **MR. REINES:** THE ONLY PREJUDICE ARGUMENT THAT WE HAVE
8 IS THE CONFIDENTIALITY CONCERNS BECAUSE IT'S DRM TECHNOLOGY
9 ABOUT HOW ALL OF THE CONTENT THAT IS BEING USED IN FLASH AND
10 OTHER SYSTEMS IS PRESERVED. SO IT IS VERY SERIOUS.

11 BUT WITH US MAINTAINING IT UNDER SEAL AND PROTECTED, WE
12 DON'T HAVE ANY OTHER ARGUMENT BEYOND THAT.

13 **THE COURT:** OKAY. AND WHY DO YOU WANT ALL THIS? DO
14 YOU THINK THERE'S SOMEBODY BACK THERE WHO IS GOING TO BE ABLE
15 TO READ IT? AND YOU ARE HOPING THEY WILL READ IT AND FIGURE
16 SOMETHING OUT THAT WASN'T ARGUED? WHAT EXACTLY ARE YOU AIMING
17 AT HERE?

18 **MS. GLAUSER:** THERE WAS TESTIMONY WHERE DR. DEVANBU
19 WOULD CITE A PARTICULAR FUNCTION AND CALL IT OUT. AND IT
20 NEEDS TO BE THAT THE FACTS UPON WHICH HE RELIED TO SUSTAIN THE
21 BASIS FOR HIS OPINION AVAILABLE FOR THE JURY. AND TO THE
22 EXTENT THE JURY COMES BACK WITH A DECISION THAT WE FEEL WE
23 NEED TO APPEAL WE NEED TO HAVE THAT UNDERLYING FACTUAL BASIS
24 IN THE RECORD FOR THE APPEAL.

25 **THE COURT:** WELL, THAT YOU'LL HAVE WITH YOUR OFFER OF

1 PROOF. THAT IS NO PROBLEM. BUT DO YOU -- DO YOU THINK THE
2 JURY WILL BE ABLE TO MAKE SENSE OUT OF THIS? OR YOU THINK
3 THERE IS SOMEONE ON THE JURY, LIKE THE SOFTWARE ENGINEER, FOR
4 EXAMPLE, WHO WILL BE ABLE TO INTERPRET IT FOR THE OTHER JURORS
5 AND ESSENTIALLY GIVE UNTESTED EVIDENCE?

6 **MS. GLAUSER:** I DON'T KNOW WHETHER ANY OF THE JURORS
7 CAN READ CODE FROM LINE TO LINE. I SURELY CANNOT. WHAT I CAN
8 DO, YOU KNOW, TO THE EXTENT THAT DR. DEVANBU TESTIFIED THAT A
9 PARTICULAR FUNCTION IS CALLED, AND THE JURORS ARE INTERESTED
10 IN THAT FUNCTION, IT'S IDENTIFIED BY NAME IN THE CODE.

11 NOW, I DON'T EXPECT THE JURORS TO BE ABLE TO READ FROM
12 START TO FINISH, AND PARTICULARLY NOT WITH THAT SUBMISSION
13 SINCE IT'S JUST INDIVIDUAL LINES BE ABLE TO READ THE
14 FUNCTIONALITY THAT WOULD BE ACTUALLY OPERATING ON THE
15 SOFTWARE.

16 **THE COURT:** OKAY. SO ASIDE FROM FORMALISTIC REASONS
17 OF WANTING IT IN THE RECORD, TELL ME AGAIN WHY YOU THINK IT
18 WOULD BE USEFUL TO THE JURY TO HAVE THIS.

19 **MS. GLAUSER:** I THINK IT DOES GO TO DR. DEVANBU'S
20 CREDIBILITY AND THE BASIS FOR HIS OPINION AND THE JURY
21 WEIGHING HIS OPINION AND THE ULTIMATE CONCLUSIONS THAT HE CAME
22 TO.

23 TO THE EXTENT I DON'T KNOW WHAT THE JURY WILL WANT TO PULL
24 FROM FROM THE EVIDENCE THAT WAS ENTERED IN THE TRIAL. BUT TO
25 THE EXTENT THAT HE TESTIFIED THIS IS WHAT THE CODE FUNCTION

1 IS, AND THEY WANT TO LOOK AT THAT, IT WAS SOMETHING THAT HE
2 TESTIFIED ABOUT. AND I THINK THE JURY SHOULD HAVE THE
3 OPPORTUNITY TO DO SO.

4 I CANNOT SPEAK TO WHETHER OR NOT I THINK IT IS LIKELY THAT
5 WOULD HAPPEN. I DON'T KNOW WHAT QUESTIONS THE JURORS WILL
6 HAVE OR WHAT EVIDENCE THEY WANT TO PULL FROM THE EVIDENCE THAT
7 GOES BACK TO THE JURY ROOM.

8 **THE COURT:** WELL, NO ONE SAID THAT THAT WASN'T THE
9 SOURCE CODE. AND NO ONE SAID THAT THAT WASN'T WHAT THE SOURCE
10 CODE DID OR FUNCTIONED AS. SO IT REALLY ISN'T ACTUALLY IN
11 DISPUTE. I JUST FIND IT CONFUSING AND BURDENSOME, AND I'M
12 WORRIED THAT SOMEONE BACK THERE CAN READ IT AND WILL MISREAD
13 IT, OR COME UP WITH SOME ODD CONCLUSION FROM IT THAT NO ONE
14 HAS ANTICIPATED. THAT'S -- THOSE ARE THE REASONS I DON'T
15 ESPECIALLY WANT TO PUT IT IN.

16 **MS. GLAUSER:** I UNDERSTAND.

17 **THE COURT:** I'M TRYING TO FIGURE OUT WHAT EXACTLY IS
18 HERE? WHAT I HAD IN MIND -- I'M AMAZED TO SEE HOW MUCH SOURCE
19 CODE WAS ACTUALLY ON THESE DEMONSTRATIVES. BUT WHAT I HAD IN
20 MIND WAS TO HAVE LITERALLY ONLY LETTERS THAT ARE ON HERE BE IN
21 THIS. NOT IF A LINE IS CITED HERE, THEN YOU GET TO QUOTE THE
22 WHOLE LINE. JUST LITERALLY IF IT SAYS: "A, B, C, D, 1, 2,
23 3," THEN YOU GET A, B, C, D, 1, 2, 3, PERIOD.

24 **MS. GLAUSER:** IF THAT IS YOUR HONOR'S PREFERENCE,
25 THEN THAT'S WHY WE HAVE SAID LET'S DO THE DEMONSTRATIVES.

1 BECAUSE THERE SIMPLY ISN'T ENOUGH --

2 **THE COURT:** I CAN SEE WHY THEY DON'T WANT TO DO THAT
3 BECAUSE -- I MEAN, WE CAN PULL OUT JUST THE SOURCE CODE. THAT
4 MIGHT WORK. BUT, NO, THEY DON'T WANT THE OTHER STUFF IN HIS
5 DEMONSTRATIVES AND NOT HAVE ANY OF THEIR DEMONSTRATIVES IN.
6 SO THAT IS NOT GOING TO WORK.

7 BUT, YES, IF YOU CAN PULL OUT JUST LITERALLY THE SOURCE
8 CODE FROM THE DEMONSTRATIVES.

9 **MS. GLAUSER:** THE PROBLEM WITH THAT, YOUR HONOR, IS
10 TWO-FOLD. ONE, PRACTICALLY, I DON'T THINK THERE IS ANY WAY TO
11 PULL THAT CODE OUT IN A REASONABLE AMOUNT OF TIME TO GET THAT
12 EVIDENCE TO GO BACK TO THE JURY. SO I THINK OUR POSITION
13 WOULD BE THAT WE WOULD LIKE TO STAND ON OUR OFFER OF WHAT WE
14 THINK THE EVIDENCE IS, AND HAVE YOUR HONOR RULE. AND WE WILL
15 STICK BY THE OFFER OF PROOF, IF WE NEED TO.

16 **MR. REINES:** YOUR HONOR, THE CODE -- AS I UNDERSTAND
17 IT, IN THIS BIG EXHIBIT, THE REASON IT IS SO BIG COMPARED TO
18 YOUR EXPECTATIONS IS THAT EXCEEDS WHAT WAS ON THE ACTUAL
19 DEMONSTRATIVE.

20 **THE COURT:** YES. I THINK WHAT IS HAPPENING IS IF THE
21 DEMONSTRATIVES GAVE THE TITLE AND THE LINE NUMBERS, THEN IN
22 ADDITION THEY WOULD PUT THE TITLE AND THE LINE NUMBERS AND
23 QUOTE THE LINES, NOT JUST THE LINE NUMBERS.

24 **MR. REINES:** THAT'S CORRECT.

25 **THE COURT:** SO THAT, I THINK, IS WHY THIS ONE IS

1 BIGGER THAN I THOUGHT IT WOULD BE.

2 **MR. REINES:** YOU ARE CORRECT.

3 **THE COURT:** SO WHAT I WILL DO IS I WILL ADMIT
4 LITERALLY THE LETTERS AND NUMBERS THAT ARE IN THE
5 DEMONSTRATIVES ON THIS, AND NO MORE THAN THAT.

6 SO IF YOU WOULD LIKE THAT, YOU CAN PREPARE SUCH AN
7 EXHIBIT. BUT JUST BECAUSE YOU PUT A LINE NUMBER HERE DOESN'T
8 MEAN YOU GET THE LINE. YOU GET THE -- AM I MAKING MYSELF
9 CLEAR?

10 **MS. GLAUSER:** YOU ARE SAYING A CITATION TO THE SOURCE
11 CODE, NOT WHAT THE SOURCE CODE SAYS ON THAT CITED LINE?

12 **THE COURT:** NO. I'M SAYING THAT THE ONLY THING THE
13 JURY SEES ARE LETTERS AND NUMBERS THAT THEY ALREADY SAW ON
14 THESE DEMONSTRATIVES.

15 IF THIS SAYS "A, B, C, 1, 2, 3," THEN YOU GET TO SAY "A,
16 B, C, 1, 2, 3."

17 THIS SAYS LINES ONE TO FOUR, YOU DON'T GET ANYTHING.

18 **MS. GLAUSER:** I GUESS IT WILL TAKE US SOME TIME TO BE
19 ABLE TO DO THAT. MAYBE THERE IS SOMETHING WE CAN CONFER
20 FURTHER ON TONIGHT. AND SEND THEM, I GUESS, AGAIN WHAT OUR --

21 **THE COURT:** WELL, IT SHOULDN'T BE THAT --

22 **MS. GLAUSER:** THE NEW VERSION OF THAT. WE WOULD HAVE
23 TO BE ABLE TO COPY AND PASTE FROM --

24 **THE COURT:** THIS IS WHAT I MEANT ALL ALONG.

25 **MR. REINES:** IT IS CLEAR, YOUR HONOR. WE WILL DO OUR

BEST TO MAKE SURE THAT THEY DO WHAT THE COURT HAS DIRECTED.

MS. GLAUSER: WE APPRECIATE THE OFFER, AND WE WILL ATTEMPT TO DO THAT AND SHARE IT WITH THE OTHER SIDE. AND THEY CAN LET US KNOW IF IT IS ACCEPTABLE.

I THINK TO THE EXTENT WE GO THIS ROUTE WE WOULD STILL LIKE IT TO BE SUBJECT TO OUR OFFER OF PROOF THAT IT IS STILL INSUFFICIENT FOR WHAT WE WANT TO OFFER.

THE COURT: YOU HAVE MADE THAT CLEAR, AND WE WILL
SUBMIT ALL OF YOUR DEMONSTRATIVES UNDER SEAL, AND THE COURT OF
APPEAL CAN DO WHATEVER THEY WANT TO WITH THEM. BUT FOR
PURPOSES OF THIS JURY I WILL ONLY SEND THEM WHAT I JUST SAID?
AND I WILL DO THAT IF YOU GET IT TO ME BEFORE THEY REACH A
VERDICT.

MS. GLAUSER: UNDERSTOOD. WE WILL WORK VERY QUICKLY,
YOUR HONOR.

MR. REINES: THANK YOU, YOUR HONOR.

THE COURT: OKAY.

(PROCEEDINGS CONCLUDED AT 2:14 P.M.)

1
2 **CERTIFICATE OF REPORTER**

3 I, DIANE E. SKILLMAN, OFFICIAL REPORTER FOR THE
4 UNITED STATES COURT, NORTHERN DISTRICT OF CALIFORNIA, HEREBY
5 CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE
6 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

7 
8

9 DIANE E. SKILLMAN, CSR 4909, RPR, FCRR

10 FRIDAY, SEPTEMBER 5, 2014